

**Legal Notice**  
**Request for Qualifications / Proposals**  
For  
**Construction Manager at Risk Services**  
For  
Area Cooperative Educational Services (ACES)  
ACES at 670 Wintergreen  
Hamden, Ct.  
SDE Project # 244-0045  
Issue date: 12/14/2022

Area Cooperative Educational Services (ACES) is requesting Qualifications / Proposals for Construction Management at Risk Services from firms to provide necessary and/or required services to perform the Work and provide the construction management services set forth in this RFQ/P.

**A pre-bid conference will be held at the site on December 21, 2022, at 3:30 PM.**

Copies of RFQ/P will be available 12/14/22

and can be obtained at

: <https://www.aces.org/our-agency/request-for-proposals/open-rfps/>

or by calling in a request to Tim Gunn at 203-498-6839

Proposals are to be submitted to:

Area Cooperative Educational Services (ACES)

Staff Development Building (SDA)

205 Skiff St.

Hamden, Connecticut 06517-1005

Attention: Timothy Gunn, ACES Director of Construction

**All Proposals shall be delivered by 2:30 pm January 17, 2023.**

Area Cooperative Educational Services is an equal opportunity employer who does not discriminate on the basis of race, color, age, ethnicity, national origin, religion, gender, marital status, disability or sexual orientation.

# REQUEST FOR QUALIFICATIONS/PROPOSALS

for

Construction Management at Risk Services for:

Area Cooperative Educational Services  
**ACES at 670 Wintergreen**  
State Project No. 244-0045

Issue date: December 14, 2022

Pre-Proposal meeting: December 21, 2022 at 3:30 pm

Deadline for Questions: January 2, 2023 at 2:30 pm

Sealed Proposals Due: January 17, 2023 at 2:30 pm



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## I. INVITATION TO SUBMIT

Pursuant to the terms and conditions of this Request for Qualifications /Proposal (the "RFQ/P" or "Proposal") the Area Cooperative Educational Services ("Owner") is pleased to announce the invitation to submit qualifications and fee proposals for construction management services for our campus consisting of multiple building (13 total) totaling approximately 157,923 square foot alterations at ACES at Chase located at 565 Chase Parkway Waterbury Ct. (the "Project")

**A Pre-Proposal Meeting will be held at 670 Wintergreen Ave. Hamden Ct. on December 21, 2022 at 3:30 pm.**

Sealed Proposals (as such term is hereinafter defined) may be mailed or hand delivered to the following:

Timothy Gunn  
ACES Director of Construction  
Staff Development Building (SDA)  
205 Skiff St.  
Hamden, Connecticut 06517-1005

**Sealed Proposals will be accepted at the above location until January 17, 2023, at 2:30 pm EST. No extensions will be granted.**

Area Cooperative Educational Services (ACES) is pleased to make this opportunity available, and looks forward to receiving your Proposal. ACES is an Equal Opportunity Employer.

Please direct any and all questions concerning this RFQ/P to Timothy Gunn, ACES Director of Construction, in writing via email at the following address: [tgunn@aces.org](mailto:tgunn@aces.org) and copy David Stein at the following email address [dstein@silverpetrucelli.com](mailto:dstein@silverpetrucelli.com) . **No questions concerning this RFQ/P will be accepted after January 2, 2023 at 2:30 pm EST.**

## II. PROJECT DESCRIPTION AND SCOPE OF SERVICES

The Project's estimated total cost is approximately \$20,305,514 which Project construction cost consist of approximately \$2,746,991 in direct trade work.

With regard to the Project, this RFQ/P is requesting proposals from firms for services necessary and/or required to perform the work and provide the construction management services set forth in this RFQ/P pursuant to and in compliance with the Contract (as such term is hereinafter defined) and the requirements set forth in this RFQ/P (collectively, the "Services").

The Services shall be performed pursuant to Owner's Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price (AIA Document A133 — 2019), as amended (the "Agreement"), together with the General Conditions of the Contract of Construction (AIA Document A201 — 2017) thereto, as amended (the "General Conditions"), copies of which are each attached to this RFQ/P as Attachment A and are deemed a part hereof (the Agreement and General Conditions, collectively, the "Contract"). Each company and/or firm submitting a Proposal (each, a "Bidder") agrees that such submission is deemed an agreement by a Bidder to (i) accept the terms and conditions of the Contract; and (ii) if awarded the Contract by the Owner, execute the Contract without any exceptions. Work will only commence on a Contract after a notice to proceed is issued by the Owner directing the commencement of such work.

After review of all factors, including, without limitation, qualifications, past performance and the fee proposal, the Owner reserves the right to accept or reject any or all Proposals or any part thereof, to waive defects in same, to waive technicalities, to accept any Proposal and to award the Contract, as applicable, to the Bidder that the Area Cooperative Educational Services (ACES), in its sole and absolute discretion, determines as the most responsive, qualified, and responsible Bidder, which may not necessarily be the lowest fee proposal Bidder.

Procurement under this RFQ/P will be conducted in accordance with Connecticut General Statutes, Chapter 173, Section 10-287(b)(2).

The phasing of the Project is anticipated as follows:

The Design Phase of the Project is tentatively scheduled to be complete by April 2023. The project is anticipated to be released for bidding as soon as authorized by DAS in July 2023.

The Construction phase is expected to start in August/September 2023 and take at least two summers with a 3 month close out phase. The campus will be occupied by ACES during the construction phase. We anticipate that a majority of the work will need to be done in the summer. The final schedule duration will be determined during the Pre-Construction Phase and the established GMP.

**CONTRACT RESPONSIBILITIES OF THE BIDDER:** The selected Bidder obligations in providing the Services and performing the work under the Contract shall include, without limitation, the following:

1. The Bidder shall provide the Services pursuant to the Contract including, but not limited to the following: constructability reviews, review of existing conditions, estimating at various phases of design, solicitation, award, permitting, construction, commissioning assistance, occupancy, post occupancy, warranty phases, closeout and coordination of all owner vendors, contractors and consultants, as necessary for the completion of the Project.
2. The Bidder shall provide a Substantial Completion Date (as such term is defined in the Contract) and a GMP (as such term is defined in the Contract) in accordance with this RFQ/P, the terms and conditions of the Contract and agreed upon final Project schedule.
3. The Bidder shall provide performance and payment bonds from a surety acceptable to the

Owner with no less than an A- rating in the amount of 100% of the GMP.

4. The individual trade contracts shall be between the Bidder and such trade contractor. The Bidder is "at risk" as it relates to the delivery of the Project.

5. The Bidder shall not perform any portions of the Work with its own forces except as may be approved by the Owner and in accordance with the guidelines as set forth by the State of Connecticut Department of Administrative Services ("DAS").

6. The Bidder shall adhere to all applicable municipal, local, state and federal laws, regulations, ordinances and/or guidelines and operate under the DAS guidelines as they apply to the Project.

7. To the extent applicable to the Project, the Bidder shall meet/exceed the goals of 25% of the State's financial assistance for the Contract to small contractors of which 25% shall be set aside for minority business enterprises, including without limitation, such goals and regulations that became effective as of October 1, 2015 pursuant to PA No. 15-5 of the June Special Session (the "Act").

#### 8. Design and Pre-Construction Phase Services

- a) Perform "constructability" reviews and estimates of the construction documents during various design phases (schematic design "SD", design development "DD" and construction document "CD") and construction. The Construction Manager shall assist in determining the scope of Work based on the available funding.
- b) Review existing conditions to confirm conditions that exist match what is shown on the drawings.
- c) ACES will be occupying this school during construction. The Construction Manager shall immediately start work on creating a construction schedule with a phasing plan of the Work that incorporates the construction Work activities and the ACES school operations so as to balance the impact on ACES school programs and completing the construction Work. The Scope of Work will include alternation to existing space to accommodate ACES program needs, mechanical upgrades, FF&E and additional Work as the budget allows.
- d) The Bidder will be responsible for incorporating the building information model ("BIM") during the construction coordination, along with the Project design professionals, participating in regularly scheduled meetings (anticipate these meetings to occur every (2) weeks, exact schedule yet to be determined), participating in decisions regarding the development of the design documents and construction documents relating to construction sequencing and cost containment. Attached hereto as Attachment J and made a part hereof for the BIM requirements. The Construction Manager shall establish necessary protocols governing the development of the model during the Project's preconstruction phase.
- e) Perform drawing and specification review for completeness, coordination, and clarity. Provide a written report to the Owner and the Project architect (the "Architect") on findings at each design phase.
- f) Create proposed site specific logistics plan. This plan shall include but not limited to: contractor and subcontractor offices, parking, laydown & storage, material stockpile, security, fencing, etc.....

- g) Develop Project specific requirements for safety, quality assurance, purchasing strategy, budget control and schedule adherence.
- h) Provide value management and/or engineering services as applicable. Participate in design team meetings every two weeks throughout the design development pre-construction phase and provide a budget control report after each meeting;
- i) The Schematic Design (SD) is nearing completion, the Design Development (DD) is expected to be complete by mid-January 2023 and the Construction Documents (CD) is expected to be complete by April 2023.
- j) Engage in budget reconciliation and control sessions;
- k) Attend all design review and other special meetings as requested by the Owner through the programming, schematic, design development and construction document phase;
- l) Provide continuous document review to ensure documents are clear and concise in an effort to minimize change orders due to unclear and/or missed scope;
- m) Perform an analysis of the construction documents and provide all required cost estimates per the requirements of the DAS with a written report detailing the clarifications and assumptions of the estimate at each phase of the design documents, including but not limited to: one (1) estimate at the schematic design phase, two (2) estimates at the design development phase, two (2) estimates at the construction documents phase and additional estimates as needed for the Project or within 2 weeks of Owner's request at no additional cost.
- n) Review each estimate with the Owner and Architect, ensure the estimate is in line with current budget. If cost adjustments need to be made, the Bidder executing the Contract (the "CM" or "Construction Manager") must collaboratively work with Architect, and their sub-consultants, to develop a list of Value Management/Engineering ideas for submission, review and approval by the Owner.
- o) Prepare base Critical Path Method (CPM) schedule using Primavera P6 or an equal scheduling program pursuant to the minimum scheduling requirements and/or standards set forth in Attachment K attached hereto and made a part hereof (the "Scheduling Standards");
- p) Provide continuous review of 3D BIM development in an effort to minimize change orders due to unclear and/or missed scope, and analyze constructability, and phasing of work.

## 9. Solicitation and Award Phase Services

- a) Arrange solicitation packages (bid packages) and adhere to the applicable DAS requirements and ACES Requirements;
- b) Provide a final pre-bid estimate in an appropriate format reflecting the bid package breakdown. Form must reflect projected GMP;
- c) Implement the CHRO requirements that may include pre-qualification process for minority business enterprises and small contractors, including without limitation, such requirements that become effective as of October 1, 2015 pursuant to the Act;
- d) Review Project labor requirements and availability, develop labor strategy and advise, identify potential bidders and generate maximum bidder interest;
- e) Schedule and conduct pre-bid conferences in conjunction with the Architect and Owner;
- f) Advertise, distribute, monitor, review, analyze and recommend awards in accordance with the

applicable DAS requirements;

- g) Monitor bidder activity to maximize bidder participation (i.e. maintain call log and bidder spreadsheet for all potential bidders for each respective bid package). Advise the Owner and Architect on the status and provide updated bidder spreadsheets on a regular basis or as requested.
- h) Update provisional construction (CPM) schedule, maintaining applicable completion dates for issuance with bid packages as required for making the master schedule and milestones for contract award.
- i) Take over management of the design BIM and transform it into the construction BIM. Utilize the BIM for construction coordination and clash detection, updating it as required when changes occur during construction.

## 10. Construction Phase Services

- a) Maintain consistent on-site staff, in accordance with your staff chart provided with the Fee Proposal (as such term is hereinafter defined), for applicable construction management;
- b) Maintain and update logistics plan on a periodic basis as Project conditions change;
- c) Establish and maintain all required reporting and other control procedures per the contract requirements and as directed by Owner (i.e. monthly progress report).
- d) Develop and maintain a Project daily log ("Daily Log"). The Daily Log shall contain, but not be limited to, daily records of work performed, weather, progress, materials purchased, workforce, accident reports, safety checklists, etc.; The daily log shall be submitted to the Owner by noon on the next working day. The log is to be forwarded both electronically and hard copy. A Daily Log is required for every day Work is performed on site throughout construction and post construction.
- e) In accordance with the minimum Scheduling Standards, develop and maintain final detailed Project construction schedule (CPM) after awards including but not limited to the Authority having jurisdiction approvals, submittals, delivery milestones, approvals, inspections, testing, construction trade Work, commissioning, substantial completion date, punch list, final acceptance;
- f) Conduct and record all job site meetings. Provide all meeting minute to the Owner and Architect in a timely manner. For all regularly scheduled job meetings, minutes shall be distributed at least three (3) days prior to the next scheduled meeting.
- g) Prepare and submit change order documentation to the Architect and Owner for review & approval. In accordance with the most current DAS change order requirements set forth on Attachment H attached hereto and made a part hereof (the "Change Order Requirements"), prepare change orders for submission to DAS to ensure proper reimbursement. The Construction Manager shall confirm these are the current requirements and shall follow the most current requirements;
- h) Track and keep a monthly log on the status of all Change Orders including State Change Orders and submit to the Architect and Owner monthly. Include a copy with the monthly requisition;
- i) Track and expedite approvals of shop drawings, requests for information (RFI), and change order requests;
- j) Develop and deliver all monthly reports in a format acceptable to the Owner.
- k) Maintain quality control and ensure conformity to the "highest" intent of the construction documents;
- l) Manage all trade contractors to ensure effective and timely adherence to the schedule, input requirements shall be in accordance with the minimum Scheduling Standards;
- m) Submit all executed trade contract agreements and vendor purchase orders in accordance with the



- Construction Managers Purchasing Schedule to the Owner and Architect;
- n) Provide cost control through progress payment review and verification according to approved schedule of values and contract amounts and terms;
  - o) Coordinate all Owner activities and post-completion activities, including assembly of guarantees, manuals including operations and maintenance, and commissioning requirements, closeout documents and Owner's final acceptance;
  - p) Coordinate and manage subcontractors; independent testing, all required inspections and certifications, State and Local inspectors, inspections and the activities and requirements of the Owner's commissioning agent;
  - q) Maintain all schedule requirements throughout the duration of the Project pursuant to the established construction standards and the minimum Scheduling Standards;
  - r) As-built drawing coordination with trade's input during construction; and
  - s) Maintain adherence to the job site safety plan developed during the pre-construction phase by the Construction Manager. Make adjustments to the plan as necessary.
  - t) Construction Manager shall also be responsible for All Work related to the coordination of, the proper functioning of and the correct installation of all Door Hardware and Doors including but not limited to: security items, FOB's, correct glass type, window location and installation, coordination and proper functioning between doors and the hardware, locks, lock sets, privacy locks (at a minimum on all staff bathrooms), latches, hinges, doors, jams, the door swing. Furthermore, Construction Manager shall compile a FOB access matrix spreadsheet, coordinate access requirements and program FOB access to designated ACES staff personnel.

#### 11. Post-Occupancy and Warranty Phase

- a) Develop, coordinate and monitor the resolution of, expedite the completion of, "punch list" items;
- b) Coordinate, monitor and resolve all warranty issues to the satisfaction of the Owner one year from substantial completion (beyond such date where applicable);
- c) Develop and maintain an effective program of all operating manuals, maintenance manuals, and any preventative maintenance data insuring their delivery to the Owner or Owner's representative, at substantial completion of the Project;
- d) Address all close-out procedures. Construction Manager to develop during the pre- construction, its project close out procedures listing the requirements and address how the Construction Manager will close out the Project in a timely manner, not to exceed three months. Also refer to Attachment G – Construction Manager Task Matrix.
- e) Provide qualified on-site staff that can address commissioning issues. Including addressing any issues that may arise the week before the start of school and for one month thereafter. The cost of this is included in the Construction Managers Fee;
- f) Schedule and perform all Owner training of all facility systems installed as part of the Contract (including the preparation of video documentation); and
- g) Schedule and conduct a "pre-end of warranty" walk-through.

### III. INSTRUCTIONS TO BIDDERS

Bidders are required to submit the following for the Project: (i) One (1) electronic copy on a flash drive and five (5) hard copies of their response to the qualification portion of this RFQ/P in a sealed envelope(s) or package(s), bearing on the outside the wording "Construction Management Qualifications Proposal, (the "Qualifications Proposal"); and (ii) in a separate sealed envelope one (1) copy of the fee proposal bearing on the outside the wording "Construction Management Fee Proposal", which together with the Qualifications Proposal collectively the "Proposal").

Qualifications Proposal must be organized with the following sections:

- A. Cover Letter (1 page) -A Bidder shall indicate its commitment to the Project and how the Bidder will exceed expectations throughout the design, construction and close out of the Project and how he/she will meet the requirements set forth in this RFQ/P with regards to budget, schedule, quality and safety. The bidder shall show documentation of a track record of success with municipalities, regional school districts and regional education service centers.
- B. Minimum Qualification Proposal Requirements – In order for a Qualifications Proposal to be responsive to this RFQ/P it must provide the following information (collectively, the "Minimum Requirements")
  - 1. Pursuant to the List of Qualifying Projects Matrix, a copy of which form is attached hereto as Attachment C and made a part hereof, a list of ten (10) of the Bidder's qualifying projects. (Note: The first two projects listed must meet the minimum experience requirements set forth in Attachment B hereto for the Project);
  - 2. Copy of the Bidder's Connecticut Major Contractors License;
  - 3. Department of Administrative Services (DAS) pre-qualification certificate for the Bidder, indicating pre-qualification in an amount equal to or greater than the Project's estimated total cost.
  - 4. Signed acknowledgement of the Bidder's acceptance of the Contract terms and conditions, a copy of the form of such acknowledgement is attached hereto as Attachment I and made a part hereof (the "Acknowledgement of Contract Terms");
  - 5. A bonding capacity 15% greater than the estimated construction cost (as provided in Attachment F). Provide the name of your bonding company, your bonding limitation, Best rating, name, and telephone number of your agent.

A Qualifications Proposal that does not comply with all of the Minimum Requirements shall be deemed an unresponsive Proposal, which will result in the Proposal being rejected and the applicable Fee Proposal being returned unopened.

- C. Organization Experience and Key Personnel (no more than 2 pages + Attachment D) -A Bidder shall indicate how it will staff the Project and provide the resumes for each member of the Bidder's team that will be assigned to the Project (one page per resume and resumes do not count toward two page limitation of this section). Indicate what each team member's role and responsibility will be for the Project and describe each team member's experience with public school construction projects in Connecticut. Indicate each team member's time commitment to the Project through the staffing chart included in the Qualifications Proposal. It is a **requirement** of this RFQ/P that assigned staffing for the Project remains involved from pre-construction through construction and close out. Demonstrate the Bidder's experience with managing k-12 school construction projects and experience with managing projects with similar budget and scope. Examples do not have to be DAS Bureau of School

Facilities ("BSF") funded projects, however such projects will be given greater consideration.

- D. Building Information Modeling (BIM) (no more than 2 pages) -The selected Bidder will participate as a key member in the design process, working with the Architect to create a completed set of Project construction documents for bidding.

Provide examples of experience with projects of similar size and scope of the Project that have been completed within the parameters of the required schedules for those projects. Examples do not have to be BSF funded projects however such projects will be given greater consideration.

- E. Schedule (no more than 2 pages + actual schedules) -Please explain your approach to effectively scheduling this Project. For all projects shown in Attachment C, submit the proposed and final schedules for those projects. Explain any strategies you used for delivering the referenced projects early. If the projects were delivered after its anticipated completion date, explain why.
- F. Budget (1 page + sample budget) – The Bidder shall manage the budget to ensure the Project is completed within the construction budget indicated in this RFQ/P. Provide a detailed explanation as to your approach in managing the budget. Provide a sample budget that will be submitted on a monthly basis during construction of the Project.
- G. Project Reporting (1 page + examples of reports) – The Bidder awarded the Contract will be responsible for producing comprehensive reports (purchasing log, RFI, Submittals, Change Order, Budget, Material Status Logs, etc.) using the Bidder's software. Please provide examples from projects previously completed of what is normally provided to effectively communicate the progress of a project and identify potential issues. How are these reports used to manage the subcontractors and overall progress of a project? What is the extent of subcontractor input for these reports? Identify the type of software the Bidder utilizes or proposes to utilize. Provide detailed information on how you plan to use the software system to streamline communication and workflows between Project team members.
- H. Commissioning (1 page) -The Bidder awarded the Contract shall be responsible for working with the Owner's commissioning agent. Elaborate on your approach for managing a successful commissioning program that provides the Owner with a fully functioning and equipped Project. Please provide a list of commissioning agents you have worked with in the past. Bidders should be aware that this Project will be subject to enhanced commissioning.
- I. Safety (1 page) – The Bidder awarded the Contract shall be responsible for maintaining a safe work environment and adherence to all applicable regulations, including, without limitation OSHA regulations. In this section discuss the Bidder's approach toward safety. Explain specifically what will be done for the Project to pro-actively maintain a safe environment for the workers and any visitors, etc. Provide a letter from your insurance carrier indicating your EMR rating for the last three years.
- J. Close-out (no more than 2 pages) -The Bidder awarded the Contract will be responsible for a prompt close-out of the Project. Describe your firm's management of the close-out process and how your procedures will ensure a timely close-out process with DAS requirements. A Qualification Proposal should include the Bidder's policy

for management of warranties, O&M manuals, owner training, as-built documents, change orders and their proper processing per DAS requirements, commissioning, punch list, certificate of occupancy, etc. A Bidder awarded a Contract shall provide to the Owner in a timely manner all requested information required to satisfy the BSF/DAS requirements as to close out of the Project.

- K. Change Orders (no more than 2 pages) – The Bidder awarded the Contract shall provide quality control of document review during the construction document phase to ensure the documents are 100% complete prior to bid. Describe your firm's approach to document review, change order management including the firm's process for verification of the validity of the change order as well as verifying and assuring the owner the best available pricing. The Bidder will be responsible for compiling and submitting change orders (ED-042CO) to DAS. Describe the firm's approach and experience with the DAS change order process.
- L. Bid Packages (no more than 2 pages) – Describe the approach to determining how the Project will be broken down into bid packages. Does the Bidder have standard bid packages? Does the Bidder evaluate a particular project to determine the best way to package work? How does the Bidder evaluate and determine what will best serve the Owner in the way the bid packages are broken-down? Include the Bidder's approach to the detail provided in describing portions of work that each trade contractor is responsible for (a Purchasing Plan).
- M. CHRO Program (no more than 1 page) – Describe your firm's past experience and approach on successfully meeting or exceeding the CHRO goals applicable to this Project, including, without limitation, the Act requirements that become effective as of October 1, 2015. Specifically, indicate if a dedicated Program Administrator will be assigned for this project, and his or her experience in other projects.  
Note: The Owner reserves the right to hire an independent Program Administrator, if it believes it is in the best interest of the project.
- N. Current and/or past Claims or Disputes (1 page) – Indicate any claims, disputes, litigation or arbitration proceedings that have occurred on any projects in the last five (5) years. Indicate who they were with and give a status of each, including those that are currently pending.
- O. Contract (1 page) -A Bidder shall include signed acknowledgment (see Attachment I) of its acceptance of the Contract and terms included therein as part of its Qualification Proposal. If such signed acknowledgment is not included with a Qualification Proposal, the Qualification Proposal shall be deemed unresponsive and your Qualification Proposal rejected.
- Equal Opportunity -A Bidder shall complete and include a signed copies of the following documents included in Section VI of the RFQ/P as part of its Qualification Proposal: (i) Non Collusion Affidavit of Bidder, (ii) Statement of Bidder's Qualifications, and (iii) Affirmative Action Policy Statement. If such signed documents are not included with a Qualification Proposal, the Qualification Proposal shall be deemed unresponsive and your Qualification Proposal rejected.
- Q. Fee Proposal -The separate Fee Proposal will be broken down into the following three (3) categories (please refer to Attachment F):

- i. **Pre-construction Phase Services Fee:** The Bidder's pre construction services fee for all the pre-construction services set forth in the Contract shall be stated as a stipulated lump sum amount, which amount shall include, without limitation, all staffing costs and reimbursable costs and expenses of the Bidder;
- ii. **Construction Phase Services Fee:** The Bidder's construction services fee for all the construction service set forth in the Contract shall be stated as a fixed fee equal to a percentage of the Cost of the Work;
- iii. **General Conditions Costs and Expenses:** The General Conditions costs and expenses of the Bidder for the items set forth in the task matrix to be completed by the Bidder and submitted as part of its Fee Proposal, a template of such task matrix is attached hereto as Attachment G and made a part hereof (the "Construction Manager Task Matrix"), shall be a stipulated lump sum amount.

In addition to the Task Matrix, the Fee Proposal shall include the following: (i) a pre- construction staffing matrix, a template of such pre construction staffing matrix is attached hereto as Attachment E and made a part hereof (the "Pre-construction Staffing Matrix"); and (ii) a Construction Phase Staffing Matrix, a template of such construction staffing matrix is attached hereto as Attachment E and made a part hereof (the "Construction Phase Staffing Matrix").

#### **IV. METHOD OF SELECTION**

The selection process is based on a four (4) step process. The selected Bidder will have successfully met all of the criteria and be deemed by the ACES Selection Committee – Sub selection committee (the "Selection Committee") as the most responsible, responsive, and qualified bidder.

##### **Administrative Review Process:**

1. A review of Qualification Proposals for compliance with the Minimum Requirements will be performed. Should any of the Minimum Requirements not be complied with, the Qualifications Proposal shall be rejected and the Fee Proposal returned unopened.

##### **Qualifications Proposal Review Process:**

2. **Review and Qualification Proposals Meeting the Minimum Requirements:** A Bidder's Qualification Proposal will be reviewed for compliance with the format identified in Section III of this RFQ/P. A score will be assigned by members of the Selection Committee. The Bidder's "qualification proposal score" will be an average of all of the reviewers' scores for such Bidder. The four (4) most responsible qualified Bidder with the highest qualification proposal score will be determined.
3. A shortlist of no less than the four (4) Bidders selected as the most responsible, responsive, and qualified Bidders will be interviewed by the Selection Committee.
4. **Fee Proposal:** From each of the four (4) most responsible qualified Bidders, a Bidder's Fee Proposal will be reviewed and evaluated by the Selection Committee.

5. A final Bidder will be chosen by the Selection Committee and will be awarded the Contract.

Neither the Owner nor any of their respective officers, directors, employees or authorized agents shall be liable for any claims or damages resulting from the selection, non-selection or rejection of any Proposal.

## V. GENERAL TERMS AND CONDITIONS

A Bidder shall adhere to the following terms and conditions and by submitting a Proposal a Bidder is hereby deemed to have accepted and agreed to comply with the terms and conditions of this RFQ/P, including, without limitation, the following terms and conditions:

1. Acceptance or Rejection by Owner – The Owner reserves the right to accept and/or reject any or all Proposals submitted for consideration to serve the best interests of the Owner. Bidders will be notified in writing as to Proposals that are not accepted.
2. Ownership of Documents -All documents submitted in response to this RFQ/P are to be the sole property of the Owner.
3. Ownership of Subsequent Products -Any product, whether acceptable or unacceptable, developed under a Contract awarded as a result of this RFQ/P is to be the sole property of the Owner unless stated otherwise in the RFQ/P or the Contract.
4. Timing and Sequence -Timing and sequence of events resulting from this RFQ/P will ultimately be determined by the Owner.
5. Oral Agreements -There shall be no oral agreements or arrangements by and between a Bidder and the Owner related to this RFQ/P.
6. Amending or Canceling Requests – The Owner reserves the right to amend or cancel this RFQ/P prior to the due date and time, if it is in its best interest.
7. Rejection for Default or Misrepresentation -The Owner reserves the right to reject a Bidder's Proposal if the Bidder is in default under any prior contract with ACES or has made misrepresentations in the Proposal.
8. Clerical Errors in Awards – The Owner reserves the right to correct inaccurate awards of a Contract under this RFQ/P resulting from clerical errors.
9. Rejection of Proposals - At the sole discretion of the Owner, Proposals may be rejected if they limit or modify any of the terms and conditions and/or specifications of this RFQ/P.
10. Changes to Proposals – No additions or changes to a Proposal will be allowed after submittal under this RFQ/P.

11. Contract Requirements -The Proposal of a Bidder awarded the Contract under this RFQ/P will become part of the Contract.

12. Rights Reserved to the Owner - The Owner reserves the right to reject any and all Proposals, in whole or in part, and to waive technical defects, irregularities and omissions if, in its judgment, the best interests of the Owner will be served.

13. Withdrawal of Submission - Negligence on the part of the Bidder in preparing the RFQ/P confers no right of withdrawal after the time fixed for the acceptance of the submission.

14. Assigning. Transferring of Agreement - The successful Bidder is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of an awarded contract under this RFQ/P without the prior consent and approval in writing by the Owner.

15. Cost of Preparing Proposal -The Owner shall not be responsible for any expenses incurred by the Bidder in preparing and submitting a Proposal. A Proposal shall provide a straightforward, concise delineation of the Bidder's capabilities to satisfy the requirements of this RFQ/P. Emphasis should be on completeness and clarity of content.

## **VI. EQUAL OPPORTUNITY EMPLOYMENT NONDISCRIMINATION AND AFFIRMATIVE ACTION**

Effective as of October 1, 2015, pursuant to PA 15-5 June Special Session, the State of Connecticut's nondiscrimination, affirmative action and supplier diversity program (formerly the "set-aside program") shall apply to the Project. The Bidder awarded a Contract for the Project shall be required to comply with the nondiscrimination and affirmative action provisions of Connecticut General Statutes Sections 4a-60 and 4a-60a and shall meet/exceed the goals and requirements as set forth above, which requirements may include pre-qualification process for small contractors and minority business enterprises

A Bidder shall complete and include signed copies of the following documents as part of its Qualification Proposal: (i) Non Collusion Affidavit of Bidder, (ii) Statement of Bidder's Qualifications; and (iii) Affirmative Action Policy Statement. (

*(Documents set forth on following pages)*

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) SS.

\_\_\_\_\_ being first duly sworn, deposes and say that:

- (1) He is \_\_\_\_\_, of \_\_\_\_\_ herein referred to as the "Bidder" that has submitted the attached Proposal;
- (2) He is fully informed respecting the preparation and content of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal is genuine and is not a collusive or sham Proposal;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit or cost element of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Area Cooperative Educational Services (ACES), or any person interested in the proposed Contract; and
- (5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including this affiant.
- (6) That no officer or employee or person whose salary is payable in whole or in part from the Area Cooperative Educational Services (ACES) is directly or indirectly interested in this Proposal, or in the equipment, supplies, materials, work or labor to which it relates, or in any of the profits thereof.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 2022

\_\_\_\_\_  
(Notary Public)

My Commission expires \_\_\_\_\_



# Statement of Bidder's Qualifications

All items and questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The bidder may submit any additional information it desires.

1. Name of Bidder \_\_\_\_\_
2. Bidder's Tax Identification No. \_\_\_\_\_
3. Permanent main office address \_\_\_\_\_  
\_\_\_\_\_
4. When organized \_\_\_\_\_
5. If corporation, where incorporated \_\_\_\_\_
6. Number of years have you been engaged in the contracting business under your present firm or trade name \_\_\_\_\_
7. Contracts on hand: (Schedule these showing amount of each contract and the appropriate anticipated dates of completion) \_\_\_\_\_  
\_\_\_\_\_
8. General character of work performed by your company \_\_\_\_\_  
\_\_\_\_\_
9. Have you ever failed to complete any work awarded to you? If so, where and why? \_\_\_\_\_  
\_\_\_\_\_
10. Have you ever defaulted on a contract? If so, where and why? \_\_\_\_\_  
\_\_\_\_\_
11. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed (use a separate sheet if necessary)  
\_\_\_\_\_  
\_\_\_\_\_
12. List your major equipment available for this Contract \_\_\_\_\_  
\_\_\_\_\_
13. List your experience in work similar to this Project \_\_\_\_\_  
\_\_\_\_\_
14. List the background and experience of the principal members of your organization, including officers  
\_\_\_\_\_

- 15. List the work to be done by Subcontractors and summarize the dollar value of each Subcontract  
\_\_\_\_\_
- 16. Credit available \_\_\_\_\_
- 17. Give Bank reference \_\_\_\_\_
- 18. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?  
\_\_\_\_\_

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Bidder's Qualifications.

\_\_\_\_\_  
(Name of Bidder)

By \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

State of \_\_\_\_\_)

) SS. County of \_\_\_\_\_)

\_\_\_\_\_ being duly sworn deposes and says that  
(s)he is

\_\_\_\_\_ of \_\_\_\_\_,

and that the answers to the foregoing items and questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
(Notary Public)

My Commission expires \_\_\_\_\_

## **AFFIRMATIVE ACTION POLICY STATEMENT**

*(must be submitted on your firm 's letterhead)*

It has always been the policy and will continue to be the strong commitment of \_\_\_\_\_ and all contractors and subcontractors who do business with Area Cooperative Educational Services (ACES) to provide equal opportunities in employment to all qualified persons solely on the basis of job-related skills, ability and merit.

\_\_\_\_\_ will continue to take Affirmative Action to ensure that applicants are employed and

that employees are treated during employment without regard to their race, color, religion, sex, national origin, ancestry, mental disorder (present or past history thereof), age, physical disability (but not limited to blindness), marital status, mental retardation, and criminal record. Such action includes, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship. , and its subcontractors will continue to make good faith *efforts* to comply with all federal and state laws and policies which speak to equal employment opportunity.

The principles of Affirmative Action are addressed in the 13th, 14th, and 15th Amendments of the United States Constitution, Civil Rights Act of 1866, 1870, 1871, Equal Pay Act of 1963, Title VI and VII of - the 1964 United States Civil Rights Act, Presidential Executive Orders 11246, amended by 11375, (nondiscrimination under federal contracts), Act I, Sections 1 and 20 of the Connecticut Constitution, Governor Grasso's Executive Order Number 11, Governor O'Neill's Executive Order Number 9, the Connecticut Fair Employment Practices Law (Sec. 46a-60-69) of the Connecticut General Statutes, Connecticut Code of Fair Practices (46a-70-8 1), Deprivation of Civil Rights (46a-58(a)(d)), Public Accommodations Law (46a-63 -64), Discrimination against Criminal Offenders (46a-80), definition of Blind (46a-51(1)), definition of Physically Disabled (46a-51(15)), definition of Mentally Retarded (46a-51(13)), cooperation with the Commission on Human Rights and Opportunities ( 46 - 77), Sexual Harassment (46a-60(a)-8), Connecticut Credit Discrimination Law (36-436 through 439) , Title I of the State and Local Fiscal Assistance Act of 1972.

This Affirmative Action Policy Statement re-affirms my personal commitment to the principles of Equal Employment Opportunity.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Authorized Signer

## **INSURANCE REQUIREMENTS**

### **VII. Indemnity Clause**

In connection with this Project, a successful Bidder shall be required to indemnify the Owner under the applicable Contract in accordance with Section 3.18 of the amended General Conditions (AIA A201-2017) of the Agreement.

### **Owner's Insurance Requirements**

All contractors and vendors are required to provide proof of the required insurance coverage before entering the Project site or commencing any Project work. Contractors and vendors must obtain, at their own expense, all the insurance required here from an insurance company A.M. Best rated as "A- VII" or better, and acceptable evidence of such insurance must be properly furnished to, and approved by the Owner. Please refer to Exhibit A Insurance Requirements contained in the Contract Agreement. Be advised if there is a conflict or the information differs the more stringent requirement shall govern.

All subcontractors are subject to the same requirements. It the responsibility of the primary contractor / construction manager / contractor and or vendor to obtain acceptable evidence of insurance from all subcontractors.

The Owner also requires that they be named as an additional insured on your general liability policy (ices). Your general liability policy must be specifically endorsed with ISO Endorsement CG 20 10 (or equivalent) *or* ISO Endorsement CG 20 26 (or equivalent), *and* ISO Endorsement CG 20 37 (or equivalent). Where these forms require a description of locations or projects, enter "Area Cooperative Educational Services project." These form numbers must be specifically referenced on the certificate of insurance, and copies of these endorsements naming the Owner as additional insured must be furnished with the required certificate of insurance. If your insurance company uses a different form to provide the Owner with additional insured status on your policies, copies must be provided in advance with the insurance certificate for review and approval by the Owner.

The amounts of insurance available to the Owner as additional insured must be equal to the full policy limits carried by the contractor or vendor, including primary and excess (umbrella) liability policies or the amounts specified below, whichever is greater. Coverage provided under excess or umbrella policies must be at least as broad as that found in required underlying policies. All coverage must be primary and noncontributory as to the Owner.

The proper name for the entity to be named as additional insured is: Area Cooperative Educational Services (ACES) and/or related or affiliated entities." Evidence of compliance with these requirements is with the ACCORD form 25, "Certificate of Liability Insurance", plus copies of any required additional insured endorsements. Certificates should be sent to: ACES, Attn.: Timothy Gunn, 350 State Street North Haven, Ct. 06473-3108.

Current insurance certificates must be furnished to the Owner at all times. Replacement certificates must be furnished ten (10) days *prior to the expiration or replacement* of referenced policies. The Owner reserves the right to make commercially reasonable changes in these requirements during the term of the Project work.

	<b>Independent Contractor (Major projects or engagements)</b>
<b>Conditions</b>	<p>All coverage provided to Owner under this section must be primary and non-contributory with any other insurance available to Owner. Owner must be specifically named as "additional insured" on your CGL policy with ISO form CG 20 10 or CG 20 26 or equivalent acceptable to Owner. Owner must also be named as "additional insured" for Products/Completed Operations on your CGL policy with form CG 20 37 or equivalent acceptable to Owner.</p> <p>Any Aggregate limit must apply per job/project. The Owner requires that these aggregate limits be maintained by the primary contractor, construction manager / contractor, as required. It is the responsibility of the primary contractor, construction manager / contractor, or his representative to notify the Owner if ever or whenever claims reduce the General Aggregate below \$1,000,000.</p> <p>Products/ completed operations must be carried as required by Statute of Limitations, or the Statue of Repose, after completion of job/ acceptance by owner.</p>
<b>Automobile Liability</b>	<p>\$1,000,000 each accident \$2,000,000 aggregate for bodily injury/property damage, including hired owned &amp; non-owned vehicles.</p> <p>Limits carried must be sufficient to satisfy required underlying limits for the umbrella policy (see below). Primary &amp; Non-contributory Waiver of Subrogation</p>
<b>Umbrella Liability</b>	<p>\$10,000,000 Limits must be excess over underlying limits described above. All coverage provided to Owner under this section must be at least as broad as that found in the underlying policies, and must be primary and non-contributory with any other insurance available to Owner. Waiver of Subrogation</p>
<b>Workers' Compensation</b>	<p>Liability meeting statutory limits mandated by the state and Federal laws with minimum limits of: State Statutory Limits These Limits apply to Employers Liability \$1,000,000 each accident for bodily injury by accident \$1,000,000 each employee for bodily injury by disease \$1,000,000 policy limit for bodily injury by disease Limits carried must be sufficient to satisfy required underlying limits for the umbrella policy (see below). Waiver of Subrogation</p>
<b>Employers Liability</b>	<p>\$1,000,000 see above each accident Limits carried must be sufficient to satisfy required underlying limits for the umbrella policy (see below).</p>
<b>Professional Liability</b>	\$1,000,000
<b>Contractors Pollution Liability</b>	<p>\$1,000,000 per occurrence/ \$1,000,000 aggregate Additional Insured Waiver of Subrogation</p>

**ATTACHMENT A --- CONTRACT  
Agreement and General Conditions**

**A sample copy of the Contract is attached hereto as Attachment A and made a part of this RFQ/P.**

# DRAFT AIA® Document A133™ – 2019

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made effective as of the [ ] day of [ ] in the year 2022  
(In words, indicate day, month, and year.)

**BETWEEN** the Owner:  
(Name, legal status, address, and other information)

«Area Cooperative Educational Services Corp. (ACES)»  
«350 State Street »  
«North Haven, CT 06473 »  
and the Construction Manager:  
(Name, legal status, address, and other information)

«TBD »  
«TBD »  
«TBD »

for the following Project:  
(Name, location, and detailed description)

«Alterations  
ACES at 670 Wintergreen »  
«670 Wintergreen Ave. Hamden, CT 06514 »

The Architect:  
(Name, legal status, address, and other information)

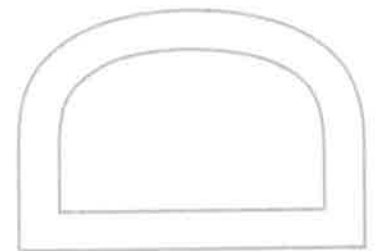
«Silver Petrucelli + Associates »  
«3190 Whitney Avenue »  
«Hamden, CT 06518 »

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1, the Owner’s Request for Qualifications/ Proposals for Construction Management at Risk Services ("RFQ/P"), dated [ ], attached hereto as Exhibit C, including any and all attachments, and addendum issued by the Owner subsequent to issuance of the RFQ/P but prior to execution of this Agreement, all of which are incorporated into and fully made a part of this Agreement. Exhibit C is attached hereto for purposes of scope and compensation only. Any other terms or conditions in Exhibit C are void, and to the extent that any terms or conditions in Exhibit C are in conflict with or are otherwise inconsistent with those recited herein, the terms of this Agreement shall control and take precedence. Further, the Construction Manager’s representations in its proposal, during the interview process, and as published in any marketing materials furnished to the Owner as to its expertise and experience are material representations upon which the Owner has relied, and the Construction Manager hereby affirms those representations as part of this Agreement.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner’s program for the Project, as described in Section 4.1.1:

*(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)*

«The Construction Manager shall manage the construction as part of an "Alterations " State Grant to make improvements to the Project. If financing is approved, the Project shall include, but not be limited to, alterations, code



upgrades, Americans with Disabilities Act (ADA) accessibility requirements, program space upgrades, MEP, Roof and FF&E as the budget allows.

**§ 1.1.2 The Project's physical characteristics:**

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

«See Attachment A. »

**§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price ("GMP"), as defined in Article 6:**  
*(Provide total and, if known, a line item breakdown.)*

«Final GMP budget not known at time of execution is approximately Twenty Million Three Hundred Five Thousand Five Hundred Fourteen Dollars (\$20,305,514), consisting of approximately Two Million Seven Hundred Forty Six Thousand Nine Hundred Ninety One (\$2,746,991) is Subcontractor costs, or direct trade work. »

**§ 1.1.4 The Owner's anticipated design and construction milestone dates:**

**.1 Design phase milestone dates, if any:**

«Tentatively scheduled to be complete by April 2023. »

**.2 Construction commencement date:**

«The Project is anticipated to be released for bidding in June 2023 or upon authorization from the State of Connecticut, Department of Administrative Services ("DAS"), whichever is later. The Construction Phase is expected to commence in approximately September 2023. »

**.3 Substantial Completion date or dates:**

«The Substantial Completion date is TBD. The final schedule duration will be determined during the Preconstruction Phase and at the establishment of the GMP. »

**.4 Other milestone dates:**

«The Final Completion date is approximately three months after Substantial Completion. Final Completion will be determined during the Preconstruction Phase and at the establishment of the GMP. »

**§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:**  
*(Identify any requirements for fast-track scheduling or phased construction.)*

«The Project will need to be constructed in phases. This Building will be occupied. The Construction Manager shall develop a Construction Schedule Phasing Plan of the Work, which shall be coordinated and reviewed with the Owner and the Architect and subject to the Owner's approval. The Construction Phasing Plan shall allow the Owner to maintain school operations in the most efficient manner possible throughout the Construction Phase. »

**§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:**  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

«Not applicable. »

**§ 1.1.6.1 Not Used**

**§ 1.1.7 Other Project information:**  
*(Identify special characteristics or needs of the Project not provided elsewhere.)*

«Not applicable. »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

«Timothy Gunn  
ACES Director of Construction  
Area Cooperative Educational Services  
350 State Street  
North Haven, CT 06473-3108 »

«Timothy Gunn shall serve as the Owner's Representative upon whose authority, directions, instructions and suggestions the Construction Manager may rely upon with respect to the day-to-day operations of the Project only. For material issues such as Changes of greater than \$75,000, a change in the Project budget, or a change in the overall Program scope, or impacting the Project Schedules, or in cases of disputes relating to the Work, Thomas Danehy or his successor shall have such authority. »

§ 1.1.9 The Architect has retained the persons or entities as set forth in Section 1.1.10 below to be part of its design team. Those persons or entities may be replaced, substituted, added or otherwise modified, and therefore, are subject to change at any time. The Architect shall provide written notice of such change to the Construction Manager, with copy to the Owner. The Construction Manager shall coordinate all Project submittals and requests for information (RFIs) directly with the Architect's representative(s) and copy the Owner's representative. The parties shall establish a document distribution protocol within sixty (60) days of the award of the Contract to the Construction Manager.

« »

§ 1.1.10 The Architect has retained the following persons or entities to be part of its design team. These persons or entities may be replaced, substituted, added or otherwise modified, and therefore, are subject to change at any time. The Architect shall provide written notice of such change to the Construction Manager, with copy to the Owner.

.1 Geotechnical Engineer:

«To be determined. »

.2 Civil Engineer:

.3 Other, if any:

Structural Engineer:

«Michael Horton Associates, Inc. »« »  
«151 Meadow Street »  
«Branford, CT 06405 »  
«Tel. (203) 481-8600 Ext. 105 »

Mechanical Engineer:

«Silver/ Petrucelli + Associates »« »  
«3190 Whitney Avenue »  
«Hamden, CT 06518 »  
«Tel. (203) 230-9007 »

Electrical Engineer:

«Silver/ Petrucelli + Associates »  
«3190 Whitney Avenue »  
«Hamden, CT 06518 »

«Tel. (203) 230-9007 »

**Plumbing Engineer:**

«Silver/ Petrucelli + Associates »

«3190 Whitney Avenue »

«Hamden, CT 06518 »

«Tel. (203) 230-9007 »

**BMS Controls Engineer:**

«Silver/ Petrucelli + Associates »

«3190 Whitney Avenue »

«Hamden, CT 06518 »

«Tel. (203) 230-9007 »

**Fire Protection Engineer:**

«Silver/ Petrucelli + Associates »

«3190 Whitney Avenue »

«Hamden, CT 06518 »

«Tel. (203) 230-9007 »

**Traffic Engineer:**

**Site Surveyor:**

**Landscape Architect:**

**Elevator Consultant:**

**Estimator Consultant:**

**PM&C**

20 Downer Avenue, Suite 5

Hingham, MA 02043

Tel. (781) 740-8007

**Food Service Designer:**

**RJS + Associates**

4 High Street

Old Lyme, CT 06371

Tel. (860) 434-2700 »

**§ 1.1.11 The Architect's representative:**

«David Stein, AIA »

«Principal & Project Manager »

«Silver/ Petrucelli + Associates »

«3190 Whitney Avenue »

«Hamden, CT 06518 »

«Tel. (203) 230-9007 »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

«To be determined »

« »  
« »  
« »  
« »

«The Construction Manager's Designated Representative shall have authority to accept instructions, make decisions, attend all required meetings, act for and bind the Construction Manager at all times and shall not be changed without the Owner's prior written consent. »

§ 1.1.13 The Owner's requirements, if any, for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9 shall be provided to the Construction Manager prior to the start of the Preconstruction Phase.

« »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

«The Construction Manager shall review its proposed bid packages and the bidder lists by bid package with the Architect, its design team and the Owner, and those parties shall provide specific instruction, as applicable, to the Construction Manager. »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, the General Conditions, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. The most stringent requirement shall control in the event of conflicts between and among the Contract Documents, including, but not limited to, any Drawings and Specifications. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement and covenants with the Owner to cooperate with the Architect and Owner; to exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to

furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

**§ 2.2.1** The Construction Manager shall perform the services in a manner consistent with the expertise, care and skill exercised by nationally recognized construction managers that have successfully completed projects of comparable size and complexity. The Construction Manager's representations in its Bid Form, during the interview process, and as published in any marketing materials furnished to the Owner are material representations upon which the Owner has relied and the Construction Manager hereby affirms those representations as part of this Agreement.

**§ 2.2.2** The Construction Manager shall exercise the prevailing applicable standard of care (the "Construction Manager's Standard of Care") in performing its obligations under the Contract Documents. All references in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Construction Manager or reference to any similar term shall include the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or similar term, as the case may be, that the Construction Manager would have obtained if not for any negligent failure of the Construction Manager to exercise the Construction Manager's Standard of Care.

### **§ 2.3 General Conditions**

**§ 2.3.1** All references herein to the A201-2017, as modified, or the General Conditions shall refer to the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner and incorporated by reference herein. The term "Contractor" as used in the modified A201-2017 shall mean the Construction Manager.

**§ 2.3.2** Not used.

**§ 2.4 Applicable Law.** Without limiting the responsibility of the Construction Manager, under other provisions of the Contract Documents, to conduct the Work in a manner consistent with applicable laws, the Construction Manager shall comply with:

- .1 If applicable, any measures required under the Contract Documents in order to comply with Regulations of Connecticut State Agencies Sections 16a-38k-1 through 9, once such measures are selected and specified in the Contract Documents (High Performance Building Requirements), including any waste stream management requirements.
- .2 All change order and other required documentation is in the form required by the Connecticut Department of Education ("DOE") and/or the Connecticut Department of Administrative Services ("DAS").
- .3 The bidding requirements of Section 2.1.6 hereof.
- .4 Maintain records as required by the DOE and/or the DAS.

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project, which designation shall be subject to the Owner's approval and may not be changed without the Owner's prior approval.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise professional care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager shall carefully review the Drawings and Specifications as they are being prepared and notify the Owner and Architect in writing of any variances between the Drawings and Specifications and requirements of applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, or of any defect, error, inconsistency, omission or nonconformity in the design that may result in a request for information during construction, recognizing that code compliance with regard to Drawings and Specifications prepared by the Architect is

the responsibility of the Architect. The Construction Manager shall promptly report to the Architect and Owner any defect, omission, inconsistency or nonconformity in the design discovered by or made known to the Construction Manager. Nothing contained in this Article 3.1.1 is intended to create any design responsibility on the part of the Construction Manager. Construction Manager's Work is to be performed in accordance with the standard of care of a Construction Manager exercising professional care as set forth in Section 2.2.1 and not a design professional.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Construction Documents prepared by the Architect, schedule and construction budget requirements, each in terms of the other, and all other services as set forth in the Owner's RFQ/P dated [ ], attached hereto as Exhibit C.

### § 3.1.3 Consultation and Constructability

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise and provide recommendations to the Owner and Architect on construction details and methodologies that affect proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on relative construction feasibility; availability of materials and labor; time requirements for procurement, actions designed to minimize adverse effects of labor or material shortages, installation and construction; possible means and methods of attaining efficiencies; and factors related to reducing construction cost including, but not limited to, costs of alternative designs or materials, budgets and possible economies. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

- .1 Prior to the submission of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare and submit a logistics plan for the use of the site and its surroundings, parking, temporary facilities, utilities, staging and storage for the Project, which shall include phasing, be coordinated with the needs of the Owner, and approved by governmental authorities.
- .2 Prior to the submission of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare and submit to the Owner a safety plan in conformance with applicable safety and health-related laws, regulations, ordinances and codes, including the Occupational Health and Safety Administration of the United States Department of Labor, as they may be amended from time to time.

§ 3.1.3.3 The Construction Manager shall prepare if requested by the Owner the building information modeling and digital data protocols for the Project. This document shall be based on the E202-2022, or as otherwise mutually agreed upon by the Owner, Architect and Construction Manager.

### § 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's and Owner's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's opinion and the Owner's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor and the Owner's separate contractors working adjacent to or in conjunction with the Project; ordering and delivery of products, including those that must be ordered in advance of construction and key milestones; and the occupancy requirements of the Owner. The Construction Manager shall include an updated construction progress schedule with each Application for Payment.

### § 3.1.5 Phased Construction

Coordination of work for and within each phase of construction shall not supplant a coordinated design of that phase by the Architect. Coordinated design of the building's components shall follow the phasing of the Work. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### **§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 3.1.6.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

**§ 3.1.6.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.7** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

**§ 3.1.8** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

**§ 3.1.9** The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

**§ 3.1.10** Not used.

### **§ 3.1.11 Subcontractors and Suppliers**

**§ 3.1.11.1** If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review.

**§ 3.1.11.2.1** The Construction Manager shall develop bidders' interest in the Project; verify that the requirements and assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials and services for common use of Subcontractors, are included in the proposed subcontracts; review the Drawings and Specifications to ascertain areas of overlapping jurisdiction and verify that all Work has been included.

**§ 3.1.11.2.2** The Construction Manager shall be solely responsible for the procurement and award of subcontracts in accordance with the Contract Documents and Connecticut laws, regulations and statutes applicable to bidding for public projects, including, but not limited to, Conn. Gen. Stat. Sections 4a-60, 4a-60a, 4a-60a, 4a-60a, 46a-68c, 4b-91, and 10-287(b)(1). The Construction Manager shall prepare bid packages, including posting public notices to the State Contracting Portal and in accordance with the State of Connecticut, Commission on Human Rights and Opportunities (CHRO) and State of Connecticut, Department of Administrative Services, Office of School Construction Grants & Review (OSCGR) requirements, and all other applicable laws, regulations and statutes for procurement and construction of public projects located in Connecticut. The Construction Manager shall include, in its planning and bid package strategy, plans to attract interest of and participation by small contractors and minority business enterprises in accordance with the requirements of CHRO.

**§ 3.1.11.2.3** The Construction Manager shall validate that bidders are prequalified in their applicable categories to satisfy DAS guidelines for school construction projects with bid packages estimated to be in excess of \$500,000. The Construction Manager shall review and analyze all bids for conformity with the requirements of the bid package and applicable laws, regulations and statutes, and submit to the Owner and Architect a list of all responding bidders and their bids. The Construction Manager shall require in the bid packages and confirm in the bids that subcontract amounts

do not include Costs of the Work that are duplicative of or scheduled as being provided by other subcontractors.

**§ 3.1.11.2.4** The Construction Manager shall advise the Owner and Architect as soon as practical of the lowest responsible and qualified bidder, and which bids are, in its opinion, non-responsive or not acceptable for just cause. The "lowest responsible and qualified bidder" shall refer the bidder whose bid is the lowest of those bidders possessing the skill, ability, and integrity necessary to faithfully perform the Work. Provided there are no objections from the Owner and/or Architect, the Construction Manager shall award contracts to each trade contractor using the contract form included in the Construction Manager's bid packages. The Construction Manager shall provide the Owner and Architect with a list of names and addresses of all subcontractors and material suppliers working on the Project at the time the GMP Amendment is executed and at the time subsequent subcontract agreements are executed. **§ 3.1.11.3** The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

**§ 3.1.11.4** Neither the Construction Manager, nor any subsidiary, parent, company, or other related party (as defined in Section 6.10.1 of this Agreement) of the Construction Manager may perform any part of the Work with its own forces.

**§ 3.1.11.5** No element of the Work may be released for bidding or award prior to Construction Manager's receipt of the written notice from the Owner to so proceed.

**§ 3.1.11.6** The Construction Manager shall summarize the bids received for each component of the Work in a spreadsheet format, including all analysis and adjustments necessary to permit a meaningful comparison among bidders, and provide such summary to the Owner and Architect. The Construction Manager shall also provide to the Owner and Architect, as appropriate, comments concerning the subcontractors and suppliers under consideration, including financial strength, past performance, and current workload, and a recommendation as to subcontractor and supplier selection.

**§ 3.1.11.7** To the extent permitted under applicable law, the Construction Manager shall not be obligated hereunder to contract with an individual or entity with which the Construction Manager has a reasonable objection.

### **§ 3.1.12 Procurement**

**§ 3.1.12.1** The Construction Manager shall prepare, for the Architect's and Owner's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction such that the Project Schedule will not be exceeded. Such schedule will comply with all scheduling requirements stated in Conn. Gen. Stat. Sections 10-291 and 10-292, including, but not limited to, any Agency approvals required prior to commencing bidding and/or construction.

**§ 3.1.12.2** As part of its Preconstruction Phase responsibilities, the Construction Manager shall prepare and submit to the Architect and Owner a purchasing plan detailing the number of bid packages, the bid package trade, a description of the scope of each bid package and the estimated value of each bid package. The Construction Manager shall update this purchasing plan monthly to reflect all procurement changes, after every update to the Construction Manager's estimate, or upon request by the Owner.

### **§ 3.1.13 Compliance with Laws**

In performing its obligations hereunder, the Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations for the procurement and construction of public projects located in Connecticut, including, but not limited to, all CHRO and OSCGR requirements, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity and affirmative action programs, and other programs required by governmental and quasi-governmental authorities.

### **§ 3.1.14 Other Preconstruction Services**

Without limiting the provisions of Section 2.1 of this Agreement, the Construction Manager's responsibilities during the Preconstruction Phase includes, but is not limited to, the following:

- .1 Estimating: Perform a review and analysis of the Construction Documents, provide all required cost estimates in accordance with the requirements of the State of Connecticut, Department of Administrative Services, and prepare and submit a written report to the Owner and Architect detailing all clarifications and assumptions of each cost estimate at each phase of the Design Documents, including but not limited to, at least one cost estimate at the Schematic Design Phase, two cost estimates at the Design



- Development Phase, two cost estimates at the Construction Documents Phase, and any additional estimates needed for the Project or within two weeks of the Owner's request.
- .2 Scheduling: Develop a detailed schedule that is tracked through the pre-construction phase to capture all of the anticipate work activities. Continue to use the schedule through the construction phase to ensure on-schedule completion.
  - .3 Value Engineering: Working with design professionals, develop value engineering at each design phase. Manage the VE log as appropriate.
  - .4 Constructability Review: Develop a listing of building systems that may have constructability or sequencing issues and inform the Architect of such potential problem design areas.
  - .5 Site Logistics Plan: Develop a graphic site logistics plan showing lay-down areas and access in and out of the building.
  - .6 Quality Plan: Develop a plan to describe how quality will be ensured in the execution of the design and communicated to the subcontractors.
  - .7 Safety Plan: Develop a project specific safety plan.
  - .8 Procurement Plan: Develop a purchasing plan detailing the number of bid packages, the bid package trade, a description of the scope of each bid package and the estimated value of each bid package, which shall be updated monthly to reflect all procurement changes, after every update to the Construction Manager's estimate, or upon request by the Owner.
  - .9 If applicable, High Performance Building Standards. Advise on the relative costs and scheduling effects of various options, as designed by the Architect, for compliance with Conn. Gen. Stat. Section 16a-38k and State of Connecticut Regulation Sections 16a-38k-1 through 9. The Construction Manager shall participate in any collaborative sessions held pursuant to Section 16a-38k-3(b) and shall assist the Owner and Architect in developing any request for an exemption made pursuant to that regulation, and shall assist the Owner and Architect in developing any request for an exemption made pursuant to State of Connecticut Regulation Section 16a-38k-9.
  - .10 Assist with and prepare documentation for and attend as requested meetings with the DAS, including, without limitation, Design Development Review meeting and the Pre-Bid Conformance Review meeting, as well as attention to any follow up items or meetings, as may be necessary to comply with DAS directives and maximize eligible costs.
  - .11 Provide one check estimate broken down by trade packages at the Construction Document phase, to validate the final budget prior to the commencement of bidding.

### **§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's Construction Contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.2.2.1** The Construction Manager shall provide allowances in the Guaranteed Maximum Price, for acceptance by the Owner, designated to cover specific portions of the Work reasonably inferable from the Contract Documents, but whose quality, quantity or configuration is subject to modifying circumstances. All allowances shall be in conformance with all applicable requirements of the State of Connecticut, including but not limited to, the State of Connecticut, Department of Administrative Services.

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems as a schedule of values in accordance with Section 9.2 of A201-2007, with separate line items each for allowances, contingencies under Section 2.2.4, , the Construction Manager's Construction Contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 A construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007, including the anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based. The construction schedule shall: (1) provide a graphic representation of material activities and events that will occur during performance of the Work; (2) identify each phase of construction separately; (3) identify the dates applicable, permits and approvals will be sought and the expected date of receipt of such permits and approvals; (4) indicate a proposed cash flow schedule for the Project; (5) identify key dates for Owner-provided information and materials; (6) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents, including any school calendar considerations, as provided by the Owner; and (7) specify the Substantial Completion Date; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

### **§ 3.2.4 Construction Contingency.**

**§ 3.2.4.1** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a mutually agreed Construction Contingency for the Project to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Such Construction Contingency shall not be used for costs covered by a Change Order, excluded under this Agreement, or caused by the breach of contract, negligence, or intentional act or omission of the Construction Manager or those for whom it is responsible. Prior to incurring such costs, the Construction Manager shall submit a written request to the Owner for reimbursement of such cost, together with an explanation of the reason that such cost is incurred. No expenditures from the Construction Contingency shall be made without prior written authorization by the Owner. All unused funds from the Construction Contingency shall be the sole property of the Owner.

**§ 3.2.4.2** The amount of the Construction Contingency shall be set at the time the Guaranteed Maximum Price is agreed upon and all subcontract agreements have been awarded and shall be no more than three percent (3%) of the costs otherwise included in the Guaranteed Maximum Price for the applicable Work. The Construction Contingency shall be included in the Guaranteed Maximum Price. The Construction Manager shall not be paid its Construction Manager's Fee under Section 6.1.2 of this Agreement for any amounts paid from the Construction Contingency.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the Project Schedule (as defined in Section of this Agreement). In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 3.2.6.1** If the Owner notifies the Construction Manager in writing that the Owner has accepted the Guaranteed Maximum Price proposal before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 3.2.6.2** If the Guaranteed Maximum Price proposal is not accepted by the Owner, the Owner may, by written notice to the Construction Manager, terminate this Agreement and shall pay the Construction Manager the fee for Preconstruction Phase services as specified in Section 4.1.2 of this Agreement. In the event of termination under this subsection 3.2.6.2, the Owner, consistent with Sections 3.2.7, shall not be obligated to reimburse the Construction Manager for any costs incurred by the Construction Manager other than those costs specified in Sections 5.1.1 and 5.1.3 of this Agreement.

**§ 3.2.6.3** In the event of termination of this Agreement in accordance with the provisions of subsection 3.2.6.2, upon payment by the Owner of any amount due and owing under subsection 3.2.6.2, the Owner's obligations to the Construction Manager shall be fully satisfied, and the Construction Manager shall be deemed to have fully released the

Owner from any claims or liabilities, and the Construction Manager shall, upon request of the Owner, assign to the Owner any subcontract, vendor contract, purchase order, letter of intent or other similar agreement that the Construction Manager has entered into in connection with the Work (any such assignment shall be subject to the terms and conditions of Section 5.4 of the A201 General Conditions).

**§ 3.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

**§ 3.2.8** The Owner may authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish any revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

**§ 3.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** The commencement of the Construction Phase shall be fixed in a written Notice to Proceed.

#### **§ 3.3.2 Administration**

**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings at the site on a bi-weekly basis (or other interval appropriate for the level of jobsite activity) and in accordance with the Construction Manager's operations to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Owner and the Architect shall be notified of meeting dates and times in writing and will attend such meetings upon the Construction Manager's request, provided sufficient notice is given to allow them to attend and it is determined that their attendance is necessary. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. In addition to satisfying its other obligations under this Agreement, the Construction Manager shall satisfy its obligations under Section 3.1.11 of this Agreement regarding selecting and contracting with subcontractors and/or suppliers for all elements of the Work. All such subcontracts or agreements shall be between the performing party and the Construction Manager in the Construction Manager's own name and not as an agent of the Owner. However, each subcontract, vendor contract, purchase order, letter of intent or any similar agreement entered into by the Construction Manager in connection with the Work shall be assignable to the Owner upon demand by the Owner, subject to the provisions of Section 5.4 of the A201 General Conditions. Each such agreement shall include language indicating that the Owner may, at the Owner's option, take assignment of the Construction Manager's rights under such agreement, subject to Section 5.4 of the A201 General Conditions.

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a baseline construction schedule for all the Work and an updated submittal schedule in accordance with Section 3.10 of A201–2017. The Construction Manager shall update the baseline construction schedule monthly, or more frequently to account for changes in the Work or as requested by the Owner. The Construction Manager shall also comply with all scheduling requirements of the Contract Documents, including without limitation, Attachment K to Exhibit C of this Agreement.

#### **§ 3.3.2.3 Monthly Report**

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as directed by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion, the number and amounts of Change Orders and other information required by the Owner. Such reports shall also compare actual progress with the progress required under the Construction Schedule and shall describe any material adjustments to the schedule or the progress forecast and the causes therefor and, where applicable, note corrective measures.

#### **§ 3.3.2.4 Daily Logs**

The Construction Manager shall keep and forward to the Owner and Architect on a weekly basis, or upon the Owner's request, a daily log containing a record for each day of weather, portions of the Work in progress, Subcontractors working on site, Owner's separate contractors working on site, number of workers on site from each Subcontractor, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### **§ 3.3.2.5 Cost Control**

The Construction Manager shall revise and refine the approved estimate of the Cost of the Work, incorporate the cost of approved changes into the Cost of the Work as such changes are approved, and develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and provide monthly monitoring reports of the budgeted Cost of the Work, showing actual costs for activities in process, estimates for uncompleted tasks, and variances between actual and budgeted or estimated costs. The Construction Manager shall account to the Owner for the allocation of the Construction Contingency in a Contingency Log as part of each monthly report. The Construction Manager shall advise the Owner and Architect whenever projected costs exceed budgets or estimates. The Construction Manager shall recommend necessary or desirable changes in the Work to the Owner and the Architect, review requests for changes, submit recommendations to the Owner and the Architect, and negotiate all Change Orders with Subcontractors in the best interests of the Owner..

**§ 3.3.2.6** The Construction Manager shall ensure that any Subcontractor providing defective or non-conforming Work correct the Work in accordance with the Contract Documents at such Subcontractor's expense. The Owner shall not be responsible for costs that could have been avoided by reasonable means, including backcharging responsible parties, prudent scheduling of the Work, supplementation of labor or equipment, judicious use of overtime or proper administration of Subcontractors. Construction Manager shall in the exercise of the standard of care set forth in § 1.2 above, report to the Owner if the Construction Manager discovers that any separate contractor retained by Owner is providing defective or non-conforming work. Owner shall require its separate contractors and its own forces to follow the Construction Manager's instruction, direction and supervision. The Construction Manager shall be responsible to promptly report to Owner any contractor that refuses to comply with the Construction Manager's direction or instruction, a reasonable description of the issue, and the actions taken by Construction Manager to ensure such compliance. To the extent that the Construction Manager has discharged its responsibilities, the Construction Manager shall not be liable for any default or non-compliance by such Owner's separate contractor.

**§ 3.3.2.7** After the award of a subcontract and during the execution of the Work, the Construction Manager shall make reasonable investigations into the Subcontractor's financial strength and its capability to complete the work of its subcontract if the Construction Manager has reason to believe that the Subcontractor is in financial distress. The Construction Manager shall promptly report its findings to the Owner.

**§ 3.3.2.8** The Construction Manager shall monitor and track small contractor and minority business enterprise participation, including set aside documentation.

### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

#### **§ 4.1 Information and Services Required of the Owner**

**§ 4.1.1** The Owner shall provide information, to the extent available to it, with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 4.1.2** Not used.

**§ 4.1.3** The Owner shall establish and periodically update the Owner's budget for the Cost of the Work as defined in Article 7. If the Owner significantly decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information in the Owner's possession and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 4.1.4.1** The Owner shall furnish tests for hazardous materials.

**§ 4.1.4.2** The Owner shall furnish surveys describing physical characteristics for the site of the Project.

**§ 4.1.4.3** Not used.

**§ 4.1.5** During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and required for the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

**§ 4.1.6** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in the sustainable Project exhibit.

#### **§ 4.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. A new representative may be subsequently designated by the Owner upon notice to the Construction Manager.

**§ 4.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, the Owner reasonably deems necessary at any time for the Project to meet the Owner's needs and interests.

#### **§ 4.3 Architect**

The Owner has retained an Architect to provide services, duties and responsibilities as described in AIA Document B101-2017, Standard Form of Agreement Between Owner and Architect, as amended by the Owner and Architect, and shall be amended for any additional services reasonably requested by the Construction Manager and that the Owner deems necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed traditional architectural services. The Owner may provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. When separate contracts are awarded by the Owner for the design of different portions of the Work, all approvals required of the "Architect" under the Contract Documents shall be construed as requiring the approval of the design professional responsible for such portion of the Work that is the subject thereof or impacted thereby.

### **ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

#### **§ 5.1 Compensation**

**§ 5.1.1** For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

The Construction Manager has included its Preconstruction Fee within its General Conditions Costs.

**§ 5.1.2** Not Used.

**§ 5.1.2.1** Not used.

**§ 5.1.3** If the Preconstruction Phase services covered by this Agreement are extended beyond the original duration, through no fault of the Construction Manager, the Construction Manager and Owner shall come to mutual agreement regarding compensation to be paid to Construction Manager for such additional services, which shall be based on

Hourly Rates, and shall be limited strictly to the Construction Manager's personnel providing additional Preconstruction Phase services on the Project beyond the fixed amount set forth in § 4.1.1, and as approved in advance by Owner, for time reasonably and necessarily required to perform the additional services, at the hourly rates set forth in Exhibit E hereto, which rates include without limitation all the Construction Manager's costs for the mandatory and customary contributions and benefits related direct salaries of its personnel, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 5.1.3 The Construction Manager shall not be paid any additional compensation for Preconstruction Services if the Construction Manager's estimate for the Cost of the Work is in excess of the Guaranteed Maximum Price.

## § 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable forty-five (45) days following presentation of the Construction Manager's invoice and approval of such invoice by the ACES Building Committee at its Committee Meetings. To the extent not approved, the Owner shall within seven (7) calendar days, provide the Construction Manager with the reasons therefore in writing. At which time, the Construction Manager may correct the deficiency and resubmit the invoice for approval. Amounts unpaid «Ninety» ( «90» ) days after the invoice has been approved by the ACES Building Committee (the "Grace Period") shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

*(Insert rate of monthly or annual interest agreed upon.)*

«Wall Street Journal Prime Rate in effect for the week which includes the last day of the Grace Period.» « »

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

«TBD percent (TBD %) of the Cost of the Work as defined in Article 7. Upon establishment of the GMP, the Fee shall become a fixed amount, and shall be included as a line item on the Construction Manager's Applications for Payment.»

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

§ 6.1.3.1 The Construction Manager's Fee of [TBD %] shall be applied to the Cost of the Work associated with changes in the Work, pursuant to Article 7 of the A201-2017 General Conditions, as modified. The Construction Manager shall include this Fee as a line item on the Change Order. This Fee shall represent the Construction Managers "profit" under Article 7 of the A201-2017 General Conditions, as modified. The Construction Manager shall not include any general conditions costs or any miscellaneous costs pursuant to Section 7.6 of this Agreement.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit, inclusive of Sub-Subcontractors, for increases in the cost of its portion of the Work:

«See Section 7.3.2.»

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

«Not applicable.»

§ 6.1.7 Other: Not Used

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

## **§ 6.2 Guaranteed Maximum Price**

**§ 6.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. To the extent the cost of the Work is less than the Guaranteed Maximum Price, the savings shall be One Hundred Percent (100%) for the benefit of the Owner.

**§ 6.2.2** Promptly after the actual costs of allowances become fixed, the Construction Manager shall submit to the Owner a proposed Change Order modifying the Guaranteed Maximum Price to reflect the difference between actual quantities or costs and the amount of the estimate or allowance. All savings realized in buying out the Work and in allowances, and in completing unit price items, shall be solely the property of the Owner.

**§ 6.2.3** The Construction Manager shall not include its Fee as stated in Section 6.1.2 of this Agreement in the Guaranteed Maximum Price for any construction contingencies and/or allowances.

### **§ 6.2.2 Construction Manager's General Conditions Costs**

**§ 6.2.2.1** The Construction Manager's General Conditions, which are made up of the Construction Manager's Personnel Costs as defined in Section 7.2 and set forth in Exhibit E to this Agreement, are fixed at [INSERT] Dollars (\$[INSERT]), which amount covers all General Conditions during both the Preconstruction Phase and Construction Phase. All General Conditions furnished prior to commencement of the Work and after Substantial Completion are included in, and shall not form the basis of an adjustment of, the General Conditions Costs set forth herein. For purposes of such limits, General Conditions shall consist of the Preconstruction Phase services described in Section 4.1.2 applicable to such scope of Work.

**§ 6.2.2.2** The General Conditions amount for the Preconstruction Phase shall be billed to the Owner in equal monthly amounts based on the overall duration of the Preconstruction Phase. The General Conditions amount for the Construction Phase shall be billed to the Owner based on the GMP schedule.

**§ 6.2.2.3** If the schedule for the Construction Phase is extended by Change Order, the General Conditions amount shall be adjusted at the Construction Manager's cost, without markup, for the period of extended duration through the Change Order. To the extent the actual cost of the General Conditions exceeds limits set forth herein for such scope of Work, as may be adjusted by the Change Order, the Construction Manager shall bear such excess costs without reimbursement or additional compensation from the Owner.

**§ 6.2.2.4** All other Reimbursable Costs of the Work, other than the General Conditions Costs as defined in § 6.2.2.1 of this Agreement, are to be billed to the Owner as they are incurred and approved by Owner on a monthly basis based upon the percentage of completion of the Work. The Construction Manager's General Requirements Costs, as defined in Section 7.5 and in the Construction Manager Task Matrix attached hereto as Attachment G to Exhibit C, shall be included as a separate line item on the Construction Manager's schedule of values. The Construction Manager shall provide sufficient back up for all Costs of the Work as set forth in this Section 6.2.2.2 to permit the Owner to verify that such services have been provided and are not duplicated in any other costs.

## **§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of material changes that impact the scheduled completion of the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as modified.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as modified.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017 General Conditions, as modified, as they refer to "cost" and "fee," and not by Articles 6 and 7

of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 General Conditions, as modified, shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** Not used.

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The parties should endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner. If the Owner and the Construction Manager agree upon rates at which particular items in this Article 7 are to be paid, those rates shall be set forth in the Construction Manager's Bid Form attached as Exhibit E hereto and/or to the GMP Amendment.

### **§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ 7.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel devoted to the project when stationed at the site or at the Construction Managers principal office and performing Work, as identified in Exhibits C and D.

**§ 7.2.2.1** Not used.

**§ 7.2.3** Not used.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, pensions, and incentive compensation provided such costs are based on wages and salaries included in the General Conditions established in § 5.2.3. Construction Manager shall not charge the Owner or the Project with any bonuses, profit sharing, incentive compensation or other discretionary payments outside of the General Conditions absent the Owner's express written consent and approval.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

**§ 7.2.6** Attached as Exhibit E is a list of the Construction Manager's designated personnel for the Project, along with their compensation information.

### **§ 7.3 Subcontract Costs**

**§ 7.3.1** Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement, and subject to subsection 7.3.2 of this Agreement. Each Subcontractor's subcontract shall include, as necessary, periodic cleaning, layout, hoisting and related manpower and costs to satisfy safety and OSHA requirements. The Construction Manager shall manage general conditions and general requirements efficiently and ensure that subcontracts do not include such costs that are more efficiently furnished by others.



### **§ 7.3.2 Increases in the Cost of the Work**

The Construction Manager shall include in each subcontract and/or supply agreement an aggregate limitation on the amount of profit and overhead the Subcontractor or Supplier and all lower tier Subcontractors and Suppliers can charge for Work performed pursuant to Change Orders and Construction Change Directives. Unless otherwise approved by the Owner, such aggregate combined profit and overhead shall not exceed Ten Percent (10%) of the sum of direct cost for labor (including labor burden), equipment, benefits, and materials (including any applicable sales tax) for Work performed pursuant to Change Orders and Construction Change Directives by Subcontractors. The maximum overhead and profit mark-up by a lower tier Subcontractor shall not exceed Five Percent (5%) of the sum of direct cost for labor (including labor burden), equipment, benefits, and materials (including any applicable sales tax) for Work performed pursuant to Change Orders and Construction Change Directives. Subcontractors shall also be permitted to mark-up lower tier Subcontractors' increases for Work performed pursuant to Change Orders and Construction Change Directives by a maximum of Five Percent (5%), for a cumulative markup of not greater than Ten Percent (10%).

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Subject to the Construction Manager's obligation to bid the subcontract work responsibly pursuant to Sections 2.2 and 9.1, unused excess materials, if any, other than unused excess materials included in a fixed price, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager with any amounts realized from such sales credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies.

**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval of arrangements concerning ownership and protection.

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Owner and the Contract Documents that can be directly attributed to this Contract shall be broken out and included in the GMP.

**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval, shall be included in the GMP. Any bonds required by the Owner for Subcontractors are a reimbursable Cost of the Work. Worker's Compensation insurance on General Conditions labor is included in the General Conditions and in the Construction Manager's rates set forth in Exhibit E.

**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. Building permit Fees are paid directly by the Owner and not included in the GMP price.

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017, as modified, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017 General Conditions, as modified. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

**§ 7.6.6** Not used.

**§ 7.6.7** Not used.

**§ 7.6.8** Not used.

**§ 7.6.9** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager or due to the Construction Manager's negligence, misconduct or breach of this Agreement, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 7.6.10** Not used.

**§ 7.6.11** Not used.

**§ 7.6.12** The Construction Manager shall keep and regularly update an accounting of its miscellaneous costs incurred under this Section 7.6, which shall be available to the Owner upon request. The Construction Manager shall submit a Change Order after achieving Final Completion of the Work to fully account for all costs, identifying such costs by subcontractor, Contract and Change Order. The Construction Manager shall comply with all applicable State of Connecticut, Department of Administrative Services, guidelines and requirements. The Change Order and all supporting documents shall be submitted to the Owner and Architect as a record document for audit by the State of Connecticut.

## **§ 7.7 Other Costs and Emergencies**

**§ 7.7.1** Other costs incurred in the performance of the Work, with the Owner's prior approval.

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, beyond the requirements of Article 10 of AIA Document A201–2017, as modified.

**§ 7.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors of any tier, or suppliers, and costs incurred by Construction Manager due to the material non-performance by a Subcontractor, provided that such damaged or nonconforming Work or failure to perform was not caused by the negligence of or failure by the Construction Manager to comply with the Contract Documents, and only to the extent that the cost of repair, correction or non-performance is not recovered by the Construction Manager from

insurance, sureties, Subcontractors, suppliers, or others. The Owner shall not, under any circumstances, be responsible paying any insurance deductibles.

**§ 7.7.4** The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017, as modified, or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

**§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Agreement, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

**§ 7.9 Costs Not To Be Reimbursed**

**§ 7.9.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, Exhibits C and D, or as may be provided in Article 14;
- .2 Not Used;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office including, without limitation postage, mailing costs, supplies (excluding blueprints and printing) fax, copy machines, computer, telephone, and miscellaneous expenses of personnel not directly devoted to the Project;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7 ;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the willful misconduct, fault, negligence of, or failure to comply with the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Other than Preconstruction Costs included in the Construction Manager’s General Conditions, permitted by Article 5 of this Agreement, costs for services incurred during the Preconstruction Phase;
- .10 Except as provided in Section 7.7.3 of this Agreement, costs and Fees for the repair or correction of defective, damaged or non-conforming Work;
- .11 Any fines, penalties or costs imposed on the Construction Manager or a Subcontractor of any tier by any local, state or federal authority (including OSHA);
- .12 Costs for maintaining any vehicle owned or leased by the Construction Manager or repairing any vehicle owned or leased by the Construction Manager for damage incurred at the Property during construction to the extent such damage is not caused by the Construction Manager or any of the Construction Manager’s Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable and except as expressly included in this Agreement;
- .13 Notwithstanding anything to the contrary provided in Section 6.7.3, costs due to the negligent act or omission of the Construction Manager, its Subcontractor or Supplier, or anyone else conducting the

- Work, or due to the failure of the Construction Manager to comply with the terms of the Contract Documents and all costs arising from any Work which the Construction Manager knew did not comply with the Contract Documents or Applicable Law, including without limiting, failing and/or neglecting to properly account for the entire scope of the Work depicted on the Contract Documents;
- .14 Costs for escalation labor, materials, equipment or services after establishment of the GMP;
  - .15 Amounts required to be paid by the Construction Manager for federal, state, or local income or franchise taxes;
  - .16 Labor, material, and equipment costs or any other costs incurred which are recoverable from Subcontractors or Suppliers or which is included in a contract with a Subcontractor or Supplier; and
  - .17 Losses resulting from lost, damaged or stolen tools and equipment (other than equipment to be incorporated into the Work to the extent covered by the Owner's property insurance).
  - .18 Costs of promotional materials; and
  - .19 Costs of employee benefits, except as expressly included in this Agreement.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in the Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall promptly notify the Owner of potential cash discounts it is aware of to enable Owner to take advantage of same. The Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate or refund. The Owner's ability to take advantage of discounts, rebates or refunds is subject to the requirements and restrictions of applicable law.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 The Construction Manager shall prepare bid packages and actively lead procurement in accordance with the Owner's requirements and as set forth in this Agreement. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Construction Manager shall evaluate, prequalify and submit a list of recommended bidders to the Owner and Architect for review and comment prior to issuance of bid packages. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall, if requested by the Owner, open them in the Owner's presence, deliver such bids to the Owner and Architect. The Construction Manager shall prepare a bid analysis and make recommendations to the Owner for the award of subcontracts or rejection of bids. The Construction Manager shall then determine, with the advice of the Owner and the Architect, which bids will be accepted, provided however, that the sum of the selected bids shall not cause the budget or GMP to be exceeded. . The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents, all applicable CHRO and OSCGR requirements, and all laws, regulations and statutes applicable to procurement and construction of public projects located in Connecticut. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Construction Manager shall provide copies of all executed subcontract agreements to the Owner and Architect prior to that subcontractor and/or supplier performing any Work on the Project.

- .1 The Construction Manager shall coordinate with the Owner and Architect to establish bidding schedules and attend pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials or methods.

- .2 The Construction Manager shall make available each bid package to the Owner and Architect for review and comment, including the final scope of Work description, allowances, unit prices, alternates, bid tabulation format, and other bid evaluation criteria.
- .3 Where the value of a portion of the Work (broken down by trade) is estimated to be greater than Seventy-Five Thousand Dollars (\$75,000), then the Construction Manager shall solicit at least three (3) bids for each subcontract to be awarded unless otherwise directed by the Owner.
- .4 The Construction Manager shall require in the bid packages and confirm in the bids: (a) that bidders include cleaning and waste removal in their own work areas to common disposal areas; and (b) that subcontract amounts do not include Costs of the Work that are duplicative of or scheduled as being provided by the Construction Manager or by other subcontractors.
- .5 The Construction Manager shall invite the Owner and the Architect to attend all scope review meetings, project walk-throughs and pre-award conferences with bidders, and provide advance notice of same to allow for the attendance of the Owner and the Architect.
- .6 The Construction Manager shall submit an updated bid analysis specifically identifying revisions to bids and including copies of final, revised bids.

§ 9.1.1 If the Guaranteed Maximum Price Amendment has been signed by the Owner and Construction Manager when a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, or with respect to Change Orders priced in accordance with Section 7.3.4 of the General Conditions, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

§ 10.1.1 The Construction Manager shall keep full and detailed records and accounts related to the procurement of Subcontractors and Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and shall be in compliance with all applicable State of Connecticut, Department of Administrative Services, guidelines and auditing requirements for School Construction projects. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts and all related documents, including complete documentation and data, electronic or otherwise, supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract.

§ 10.1.2 The Construction Manager shall submit copies of all accounting records required under Section 10.1.1 of this Agreement with its Application for Final Payment, and it shall certify that there are no pending payment disputes of any kind with any of its subcontractors, suppliers, consultants or any other person or entity who performed Work on the Project. Not later than fifteen (15) Days after the Owner makes Final Payment to the Construction Manager, the Construction Manager shall update, if applicable, and submit all final accounting records to the Owner. The Construction Manager shall preserve these records until either after the State of Connecticut has performed its final audit and has notified the Owner that the documents no longer need to be preserved or as may be required by law, whichever is longer.

§ 10.1.3 Records to be available for audit shall include but not be limited to accounting records, written policies and procedures; contract and subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.);

original estimates; estimating worksheets; correspondence invoices; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; electronic or computer data and any other supporting evidence deemed necessary to substantiate charges. These records shall be open to inspection and subject to an audit and/or reproduction to the extent necessary to adequately permit evaluation and verification of the Cost of the Work, and any invoices, change orders, payments or claims submitted by the contractor or vendor to any of his payees pursuant to the execution of this Agreement

§ 10.1.4 If any audit reveals an overcharge, the Construction Manager will return any overpayment disclosed in the audit to the Owner within ninety (90) Days. The Construction Manager will bear the costs of the Owner's audit if material inaccuracies are discovered in its cost accounting records for the Project. Nothing in this Section 10.1.4 shall limit the remedies of the Owner by law or in equity.

§ 10.1.5 The Construction Manager shall deliver to the Owner such items as are reasonably requested by the Owner to support costs billed to the Project and shall provide any further assistance requested by the Owner during an audit of the Project.

§ 10.1.6 The Construction Manager shall comply with all accounting procedures and record retention policies reasonably requested by the Owner.

§ 10.1.7 Upon request of the Owner or the Architect, the Contractor will, at no cost to the Owner, cooperate and assist the Owner and Architect, during any audit of the Project conducted by the Owner or an Agency at any time after Substantial Completion.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Construction Manager, and Certificates for Payment issued by the Architect and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that a pencil copy of an Application for Payment is received by the Architect not later than the 20th day of a month, and a complete, proper and correct certified Application for Payment is received by the Owner and Architect not later than the first day of the following month, the Owner shall make payment to the Construction Manager not later than the thirtieth (30<sup>th</sup>) day of the same month. If a complete, proper and correct certified Application for Payment is received by the Owner and Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Owner and Architect receive the certified Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit certified payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus certified payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall be based upon AIA Document G702™ – 1992 *Application and Certificate for Payment*. The Construction Manager shall submit a Schedule of Values based upon AIA Document G703™ – 1992 *Continuation Sheet*, which allocates for the various parts of the Work and demonstrates the value of the completed Work, value of materials stored and the value of the balance to finish the Work, together with the partial lien waivers from the Construction Manager and each Subcontractor for all portions of the Work included in previous Applications for Payment.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager and approved by the Owner in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any Construction

Contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager shall only include fully executed Owner Change Orders in each Application for Payment.

**§ 11.1.5.1** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment, unless objected to by the Owner. The line items stated on the schedule of values shall remain fixed. Any changes to the schedule of values shall be accounted for on the Change Order line item(s) to the schedule of values.

**§ 11.1.5.2** The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 11.1.5.3** When the Construction Manager allocates costs from a Construction Contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

**§ 11.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 11.1.7** In accordance with AIA Document A201-2017, as modified, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 11.1.7.1** The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work; for portions of the Work subject to a fixed sum, such allocation shall be determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon an amount that bears the same ratio to that fixed-sum fee stated in Section 6.1.2 as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 11.1.7.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Owner or Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017, as modified;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, as modified;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five percent (5%) from that portion of the Work invoiced.

**§ 11.1.8.1.1** The following items are not subject to retainage:

For material only in which no labor on site is involved; Example – Doors and Hardware

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:

Upon attaining Substantial Completion, the Construction Manager may apply for a reduction in retainage from 5% to 2.5%, provided it has fully met all of its obligations under the Contract Documents. The Owner may, at its sole option and discretion, elect to reduce the amount of retainage withheld to 2.5%. The percentage of retainage withheld on subcontracts by the Construction Manager shall be equal to amounts withheld under this Agreement, except by the express, prior, written consent of the Owner. Interest will not accrue or be payable on retainage.

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

«Not applicable.

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017, as modified.

**§ 11.1.10** Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. Retainage in the amount of five percent (5%) shall be held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Owner or Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Owner or Architect has made exhaustive or continuous on-site inspections; or (3) that the Owner or Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 11.1.13** In the event of a monetary dispute between or among the Construction Manager and any Subcontractor or supplier, the Construction Manager shall immediately notify the Owner in writing and furnish such information and substantiation as the Owner may require with respect to the nature and extent of such dispute or claim.

**§ 11.1.14** If a mechanic's lien should be recorded against the Project by any person or entity furnishing services, labor, materials or equipment under the Contract Documents, the Construction Manager shall, within ten (10) days after notice from the Owner, cause such lien to be removed and/or discharged, by bond or otherwise, unless the mechanic's lien is the result of the Owner wrongfully withholding undisputed payment from the Construction Manager. If such lien is not



removed or discharged within such time, the Owner may, in addition to all other rights and remedies, cause such lien to be removed or discharged, and all reasonable expenses incurred by Owner in doing so may be charged to or withheld from the Construction Manager hereunder. The Owner also may, in its sole discretion and in addition to all other rights and remedies, withhold up to the amount of the lien from the Construction Manager's Applications for Payment until such lien is discharged to the satisfaction of the Owner. The Construction Manager agrees to indemnify and hold harmless the Owner from all costs and expenses incurred by the Owner in connection with such liens unless such liens result from the Owner's failure to comply with its payment obligations under the Agreement.

§ 11.1.15 Notwithstanding anything to the contrary contained in the Contract Documents, issuance of a Certificate for Payment by the Architect is a recommendation only; payment to the Construction Manager of amounts certified in a Certificate for Payment is subject to the Owner's approval.

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, as modified, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted its most recent accounting for the Cost of the Work and a final Application for Payment, and certification that there are no pending disputes of any kind with any of its subcontractors, suppliers, consultants, or any other person or entity who performed Work on the Project. Not later than fifteen (15) Days after the Owner makes Final Payment to the Construction Manager, the Construction Manager shall update, if applicable, and submit all final accounting records to the Owner;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4 the Construction Manager has satisfied the obligations of § 9.10 of AIA A201-2017, as modified.

§ 11.2.2 Provided the Construction Manager has fully performed all its obligations under the Contract Documents, within 60 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. The Construction Manager shall provide all information, documentation and assistance requested by the Owner in connection with the State of Connecticut audit for the Project at no additional costs to the Owner. The Construction Manager acknowledges that such audit may not take place until years after Final Completion, and it shall keep all required accounting records and other related documents until such time as the audit is completed and the Owner notifies it that such documents no longer need to be preserved and/or as may be required by law, whichever is longer.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Owner will either issue a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Owner's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017, as modified. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017, as modified. The Owner and Architect are not responsible for verifying the accuracy of the Construction Manager's final accounting. The amount of final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Owner's final accounting and the Fee;
- .2 Subtract amounts, if any, for which the Owner or Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of AIA Document A201-2017, as modified, or other provisions of the Contract Documents;
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation within 30 days after the Construction Manager's receipt of a copy of the final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the requirements of this Section have been satisfied.

§ 11.2.4 Not used.

### § 11.3 Interest

Undisputed payments due and unpaid under the Contract shall bear interest from the date payment is due pursuant to and in accordance with Section 5.2.2 of this Agreement at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

«Wall Street Journal Prime Rate in effect for the week which includes the last day of the Grace Period.»

## ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Not used. Not used.

### § 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to General Conditions Article 15, the method of binding dispute resolution shall be:

arbitration or litigation at the Owner's sole option with exclusive venue in Connecticut Superior Court, Judicial District of New Haven at New Haven, Connecticut. The parties waive their right to a jury.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause for the reasons set forth in Article 14 of A201-2017, as modified.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as

the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

**§ 13.1.6.1** If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If there is no assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the reasonable and fair costs necessarily incurred by the Construction Manager because of such termination.

## **§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**

### **§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017, as modified.

### **§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, as modified, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017, as modified, shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017, as modified.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### **§ 13.2.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, as modified, then the Owner shall pay the Construction Manager a termination fee as follows:

The cost of work put in place including all expended general conditions and general requirements plus the Construction Manager's [INSERT]% fee on Work performed and approved, said costs being the extent of the Owner's liability in the event of termination. Under no circumstances shall Owner be liable for anticipated lost profits or overhead on Work not performed.

## **§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as modified; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, as modified, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017, as modified. Where reference is made in this Agreement to a provision of AIA Document A201–2017, as modified, or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, as modified, the Construction Manager shall not assign the Contract as a whole without written consent of the Owner. If the Construction Manager attempts to make an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement, as required by Exhibit B, Insurance and Bonds, and Exhibit C, Insurance Requirements, attached hereto.

#### § 14.3.1.6 Other Insurance

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. The Construction Manager shall include Additional Insured on its insurance policies as set forth in Section 11.1 of the AIA Document A201-2017, as modified, and Exhibit C attached hereto.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner and Architect that evidence compliance with the requirements in this Section 14.3.1, Section 11.1 of the AIA Document A201-2017, as modified, and Exhibit C attached hereto.

#### § 14.3.2 Construction Phase

§ 14.3.2.1 Prior to commencement of the Construction Phase, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.2 The Construction Manager shall cause each and every Subcontractor, at its expense, to obtain and maintain throughout the performance of the Work, insurance in such form and amounts set forth in this Section 14.3.1, Section 11.1 of the AIA Document A201-2017, as modified, and Exhibit C attached hereto, unless a different form or a lesser amount is agreed to by the Owner and the Construction Manager on a case-by-case basis. Notwithstanding the foregoing, subcontractors not performing engineering or other design services shall not be obligated to carry the Professional Liability coverage required of the Construction Manager.

§ 14.3.2.3 The Construction Manager shall include Additional Insured on its insurance policies as set forth in Section 11.1 of the AIA Document A201-2017, as modified, and Exhibit C attached hereto.

§ 14.3.2.4 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1, Section 11.1 of the AIA Document A201-2017, as modified, and Exhibit C attached hereto.

§ 14.3.2.5 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents covering faithful performance of the Contract Documents and payment of obligations arising thereunder. The costs of such bonds shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

§ 14.3.2.6 The Construction Manager shall deliver all bonds required under the Contract Documents to the Owner and Architect at least three days before the commencement of any Work at the Project site.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, as modified, shall be pursuant to and in accordance with AIA Document E202™-2022, Building Information Modeling and Digital Data Exhibit, as modified.

»

§ 14.5 Other provisions:

«§ 14.5.1 The Construction Manager agrees to fully comply with the Nondiscrimination and Affirmative Action requirements of Conn. Gen. Stat. Sections 4a-60 and 4a-60a.

.1 The Construction Manager agrees and warrants that in the performance of the Agreement, such Construction Manager will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identify or expression, intellectual disability, mental disability, or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Construction Manager further agrees to take affirmative action to insure that applicants with job related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability, or physical disability, including, but not limited to blindness, unless it is shown by such Construction Manager that such disability prevents performance of the work involved; (b) the Construction Manager agrees, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, to state that it is an "affirmative action-equal opportunity employer" in accordance with the regulations adopted by the CHRO; (c) the Construction Manager agrees to provide each labor union or representative of workers with which such Construction Manager has a collective bargaining agreement or other contract or understanding and each vendor with which such Construction Manager has a contract or understanding, a notice to be provided by the CHRO advising the labor union or worker's representative of the Construction Manager's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (d) the Construction Manager agrees to comply with each provision of this Section and Conn. Gen. Stat. Sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. Sections 46a-56, 46a-68e, 46a-68f and 46a-86; (e) the Construction Manager agrees to provide the CHRO with such information requested by the Commission, and permit access to pertinent books, records, and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and Conn. Gen. Stat. Section 46a-56.

.2 The Construction Manager agrees and warrants that in the performance of the Agreement, such Construction Manager will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; the Construction Manager agrees to provide each labor union or representative of workers with which such Construction Manager has a collective bargaining agreement or other contract or understanding and each vendor with which such Construction Manager has a contract or understanding, a notice to be provided by the CHRO advising the labor union or workers' representative of the Construction Manager's commitments under this Section, and to post copies of the notice in conspicuous places

available to employees and applicants for employment; the Construction Manager agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. Section 46a-56; the Construction Manager agrees to provide the CHRO with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Construction Manager which relate to the provisions of this Section and Conn. Gen. Stat. Section 46a-56.

**§ 14.5.2** The Construction Manager shall pay all bills for labor and material performed and furnished by others in connection with the construction, furnishing, and equipping of the improvements and the performance of the Work within thirty (30) days after the date the Construction Manager receives payment from the Owner. The Construction Manager shall include in each of its subcontracts a provision requiring each Subcontractor and Supplier to pay any amounts due any of its subcontractors or suppliers, whether for labor performed or materials furnished, not later than thirty (30) days after the date such Subcontractor or Supplier receives a payment from the Construction Manager which encompasses labor performed or materials furnished by such subcontractor or supplier.

#### **§ 14.5.3 Prevailing Wage**

To the extent required under Conn. Gen. Stat. Section 31-53, the wages paid on a hourly basis to any person performing the work of any mechanic, laborer or worker on the Work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of Conn. Gen. Stat. Section 31-53 shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make such payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of the payment or contribution for such person's classification on each pay day.

#### **§ 14.5.4 Safety Training**

To the extent required pursuant to Conn. Gen. Stat. Section 31-53b, the Construction Manager shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on such project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under Conn. Gen. Stat. Section 31-53 on such public works project, pursuant to such contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268. The Construction Manager shall also furnish proof, and shall cause its Subcontractors to furnish proof, that any plumber or electrician subject to the continuing education requirements of section 20-334d, who has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration five or more years prior to the date such electrician or plumber begins work on such public works project, has completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

**§ 14.5.5** If any provision of this Agreement or any other contracts among the Contract Documents is found to be invalid or illegal by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and the parties agree to substitute for the invalid provision the provision within the bounds of the law which most clearly effectuates the legal and economic intent of the invalid provision.

**§ 14.5.6** The Construction Manager hereby agrees that it shall perform background checks on all of its employees, agents and persons under its control, including but not limited to, its subcontractors prior to any such individuals having access to the Project site. Such background checks shall include a disclosure of any and all felony criminal convictions, including but not limited to, any sex offender registry postings. The Construction Manager shall use a firm to perform the background checks, such firm shall be approved by ACES which approval shall not be unreasonably withheld. The reasonable cost of each background check shall be a Cost of the Work. Individuals who have an unsatisfactory background check shall be denied access to the Project site by the Construction Manager. The Construction Manager shall issue a badge to all individuals having access to the Project site which shall state their name, company that they work for, their photograph and "ACES at Chase Facility". Each individual shall wear a badge at all times while on the Project site and the badge shall be easily visible.

§ 14.5.7 The Construction Manager hereby agrees that the Owner reserves the right, at its sole discretion, to require the immediate removal from the Project site if any individual employee(s) or agent(s) and those of its Subcontractors has exhibited unlawful or inappropriate behavior or conduct towards any of the Owner's students or employees.

§ 14.5.8 The parties have had full opportunity to review, consult counsel and participate in the negotiation and preparation of this Agreement and, accordingly, the Contract Documents shall not be more strictly construed against any one of the parties hereto.

§ 14.5.9 In the event any term or provision of the Agreement is finally determined to be illegal, void or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of the Agreement shall be construed to be in full force and effect.

§ 14.5.10 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute a single instrument.»

## ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents incorporated into and made fully a part of the Agreement, as if attached to or repeated herein:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, as modified
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds, as modified
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified
- .5 AIA Document E203™-2022, Building Information Modeling and Digital Data Exhibit, as modified, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

- .6 Other Exhibits:  
*(Check all boxes that apply.)*

AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

Supplementary and other Conditions of the Contract:

- .4 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents.)*

Exhibit C Owner's Request for Qualifications/ Proposals for Construction Management at Risk Services ("RFQ/P), dated [ ] (40 pages)

Exhibit D Construction Manager's Staffing Matrix (2 pages)

Exhibit E - Construction Manager's Bid Form (1 page)

Exhibit F - Construction Manager's Acceptance of Contract Terms (1 page)

Exhibit G - Owner's Tax Exempt Certificate

This Agreement is entered into as of the day and year first written above.

**AREA COOPERATIVE EDUCATIONAL SERVICES CORP.**

\_\_\_\_\_  
**OWNER** *(Signature)*

«Thomas M. Danehy, Ed.D. »«Executive Director »  
*(Printed name and title)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

« »« »  
*(Printed name and title)*





# DRAFT AIA® Document A133™ - 2019

## Exhibit A

### Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the "Agreement")  
(In words, indicate day, month, and year.)

for the following PROJECT:  
(Name and address or location)

«Alterations »  
«ACES at 670 Wintergreen Chase »  
«670 Wintergreen Ave »  
«Hamden, CT 06514 »

**THE OWNER:**  
(Name, legal status, and address)

«Area Cooperative Education Services Corp. (ACES) »« »  
«350 State Street »  
«North Haven, CT 06473 »

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

«TBD »« »  
«TBD »  
«TBD »

#### TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

#### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

##### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, as amended by the Owner and Construction Manager, the Owner and Construction Manager hereby further amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement, as amended by the Owner and Construction Manager.

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed «TBD » (\$ «TBD »), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

*(Provide itemized statement below or reference an attachment.)*

«See attached Exhibit \_\_\_\_\_ - Construction Manager's Schedule of Values dated [ \_\_\_\_\_ ] »

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement, as amended by the Owner and Construction Manager.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 7.2.3 of the Agreement, as amended by the Owner and Construction Manager.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
TBD	TBD

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
TBD	TBD	TBD

§ A.1.1.6 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
TBD	TBD	TBD

**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

[  ] The date of execution of this Amendment.

[  ] Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

« »

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 **Substantial Completion**

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « X » ] By the following date: « TBD »

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 Not used.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See, Exhibit C to AIA Document A133-2019, as modified	Owner's RFQ/P for Construction Manager at Risk Services		40

§ A.3.1.2 The following Specifications:  
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

«See, Project Specifications, dated \_\_\_\_\_, attached to AIA Document A133-2019, as modified, as Exhibit \_\_\_\_\_ »

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:  
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

«See, Project Drawing List, dated \_\_\_\_\_, attached to AIA Document A133-2019, as modified, as Exhibit \_\_\_\_\_ »

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:  
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
Not applicable.		

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:  
(Identify each allowance.)

Item

Price

TBD

TBD

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption and clarification.)

«TBD »

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

«Construction Manager's Schedule of Values, dated \_\_\_\_\_  
Construction Manager's Schedule, dated \_\_\_\_\_ »

**ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

«See, Section 1.1.10 of the AIA Document A133-2019, as modified. »

This Amendment to the Agreement entered into as of the day and year first written above.

**AREA COOPERATIVE EDUCATIONAL SERVICES CORP.**

OWNER (Signature)

«Thomas M. Danehy, Ed.D. »«Executive Director »  
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »  
(Printed name and title)

# DRAFT AIA® Document A133™ - 2019

## Exhibit B

### Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the « » day of « » in the year « »  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

«Alterations »  
«ACES at 670 Wintergreen »  
«670 Wintergreen Ave »  
«Hamden, CT 06514 »

**THE OWNER:**  
(Name, legal status, and address)

«Area Cooperative Educational Services Corp. (ACES) »« »  
«350 State Street »  
«North Haven, CT 06473 »

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

«TBD »« »  
«TBD »  
«TBD »

#### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE B.1 GENERAL

§ B.1.1 The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit, Section 14.3 of AIA Document A133-2019, Standard Form of Agreement between Owner and Construction Manager as Constructor, as modified by the Owner and Construction Manager, Exhibit C to the A133-2019, as modified by the Owner and Construction Manager, and Article 11 of the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner and Construction Manager. To the extent any terms or conditions in these provisions and/or documents are in conflict with or are otherwise inconsistent with those recited herein, the more stringent requirement shall govern. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified by the Owner and Construction Manager.

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.

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**ARTICLE B.2 OWNER'S INSURANCE**

**§ B.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2, Section 14.3 and Exhibit C to AIA Document A133-2019, as modified, and Article 11 of AIA Document A201-2017, as modified, and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ B.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**§ B.2.3 Required Property Insurance**

**§ B.2.3.1** The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Cause of Loss	Sub-Limit

**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit

**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions, as modified.

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** The deductible maintained on the Owner's property insurance shall be the responsibility of the Construction Manager, and shall not be included in the Contract Sum. The Construction Manager and its subcontractors and consultants of all tiers expressly waive all rights, interest, and claims against the Owner for such amounts retained.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of

coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

### § B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

### § B.2.4 Not used.

§ B.2.4.1 Not used.

§ B.2.4.2 Not used.

§ B.2.4.3 Not used.

§ B.2.4.4 Not used.

§ B.2.4.5 Not used.

§ B.2.4.6 Not used.

§ B.2.4.7 Not used.

### § B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

§ B.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

«Cyber Liability Insurance Coverage. Sufficient cyber liability insurance coverage is required to insure Owner and the Additional Insured Entities against any and all claims or claims for damages arising relating to the Project, and such insurance coverage shall apply to all services provided by Construction Manager, its Trade Contractors, sub-Trade Contractors, vendors and subconsultants for the Project. The cyber liability insurance shall include coverage for security and privacy liability (including, but not limited to, privacy violations, information theft, intentional and/or unintentional release of information, regulatory defense expenses, coverage for fines and penalties, and alteration of electronic information), network security, media liability, business interruption and extra expense, crisis-management expenses (including, but not limited to, notification expenses, public relations, reputational damage, forensic investigations, and credit monitoring expenses), cyber extortion, computer fraud, and funds transfer fraud.»

§ B.2.5.2 Not used

## ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

### § B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to entering the Project site and prior to the commencement of the Work; (2) at least ten (10) days prior to renewal or replacement of

each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the additional insureds are required herein on the Construction Manager's policy or policies, and whether coverages are written on an occurrence or claims-made basis. All certificates of insurance shall identify the Owner as additional insured on an ACORD Form 25 Certificate of Insurance (COI) as follows: "Area Cooperative Educational Services, Inc. (ACES), 350 State Street, North Haven, CT 06473". The Construction Manager shall provide its COI and COIs for all Subcontractors of all tiers, including all additional insured endorsements, to the Owner as follows: "ACES, Attn: Timothy Gunn, 350 State Street, North Haven, CT 06473-3108." If insurance carrier uses a different form to identify additional insureds required herein on its insurance policies, the Construction Manager shall provide such forms in advance to the Owner for its review and approval.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. The Owner shall not be responsible for any amounts paid by the Construction Manager or those for whom it is responsible on account of deductibles on their policies of insurance.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability, excess/umbrella liability, and automobile liability coverage to include (1) the Owner, the Owner's school districts, the boards of education of the Owner's school districts, the building committee(s) for the Project, and their respective departments, boards, and commissions and their respective officers, directors, administrators, members, managers, agents, servants, employees and volunteers, and any other individuals or entities reasonably designated by the Owner in writing as additional insureds, pertaining or relating to work, services or materials delivered to the Owner, for (1) claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. Additional insured coverage on liability policies, with the exception of Worker's Compensation, Employer's Liability and Professional Liability, if any, will be primary coverage to any other coverage maintained by such additional insureds and shall not permit or require such other coverage to contribute to the payment of any loss. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, or equivalent acceptable to the Owner, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04, or equivalent acceptable to the Owner. Where these forms require a description of location(s) or project(s), these forms shall state "Area Cooperative Educational Services at Chase Facility Project". The Construction Manager agrees, for the purposes of additional insured coverage only, that the Work is being performed pursuant to a direct contractual obligation with such additional insureds and that the obligations hereunder to provide additional insured coverage are specifically enforceable by such additional insureds. The Construction Manager and/or its Subcontractors shall be solely responsible for any loss or damage to their tools, equipment or materials, whether owned or leased, that are not to become part of the completed Project.

**§ B.3.1.4 Subcontractor Coverage.** The Construction Manager shall cause all Subcontractors to provide and maintain insurance in compliance herewith, using good business judgment in establishing coverage limits and deductibles applicable to such insurance, and subject to the Owner's acceptance. The Construction Manager shall ensure that Subcontractors and those for whom they are responsible have provided certificates of insurance in compliance with the Contract Documents prior to entering the Project site and commencing any Work on the Project site.

**§ B.3.1.5 Primary.** Insurance coverages provided by the Construction Manager and those for whom it is responsible shall be primary, and any insurance carried by the Owner will be considered excess or contingent.

**§ B.3.1.6 Rating.** All of the insurance policies required of the Construction Manager and those for whom it is responsible shall have the legal company name of the insurer providing coverage and contain the current rating of the insurer as provided by A.M. Best's Insurance Reports, which must be A-IX or better. This obligation applies to coverage written on an occurrence as well as a claims-made basis.



**§ B.3.1.7 Failure to Maintain Coverage.** Failure to maintain the required insurance policies in force during the Work covered by this Agreement or any extensions thereof or extra or additional Work shall constitute a material breach of this Agreement, entitling the Owner, at its sole option and notwithstanding anything to the contrary contained herein, to immediately cancel and terminate this Agreement for cause.

**§ B.3.1.8 Occurrence.** All liability coverage shall be written on an occurrence basis only.

**§ B.3.1.9 Policies Available to Owner.** The Construction Manager will make all insurance policies available to the Owner upon the Owner's request.

**§ B.3.1.10 No Limitation.** By requiring insurance herein, the Owner does not represent that coverage and limits will necessarily be adequate to protect the party providing insurance. The insurance required herein shall not reduce or limit any party's obligation in connection with its performance on the Project.

### **§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

« »

### **§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than «One Million and 00/100 Dollars » (\$ «1,000,000 » ) each occurrence for bodily injury and property damage, «Two Million and 00/100 Dollars » (\$ «2,000,000 » ) annual general aggregate, and «Two Million and 00/100 Dollars » (\$ «2,000,000 » ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

**§ B.3.2.2.2** The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles hired, owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than «One Million and 00/100 Dollars » (\$ «1,000,000 » ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage, and with policy limits sufficient to satisfy required underlying limits for excess or umbrella liability insurance required under Section B.3.2.4 below.

§ B.3.2.4 Umbrella/ Excess liability insurance with policy limits of not less than «Ten Million and 00/100 Dollars » (\$ «10,000,000 » ) each occurrence, and not less than «Ten Million and 00/100 Dollars » (\$ «10,000,000 » ) in the aggregate. The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under this Section B.3.2.4 and Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation Liability meeting statutory limits mandated by applicable federal and Connecticut laws with minimum limits at Connecticut statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than «One Million and 00/100 Dollars » (\$ «1,000,000 » ) each accident, «One Million and 00/100 Dollars » (\$ «1,000,000 » ) each employee for bodily injury by accident, «One Million and 00/100 Dollars » (\$ «1,000,000 » ) each employee for bodily injury by disease, and «Two Million and 00/100 Dollars » (\$ «2,000,000 » ) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional design services that constitute the practice of architecture or engineering as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of such professional services, with policy limits of not less than «One Million and 00/100 Dollars » (\$ «1,000,000 » ) per claim and «Two Million and 00/100 Dollars » (\$ «2,000,000 » ) annual aggregate on a claims made basis, and shall maintain such insurance for a period of eight (8) years following the date of Substantial Completion.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than «One Million and 00/100 Dollars » (\$ «1,000,000 » ) per claim and «Two Million and 00/100 Dollars » (\$ «2,000,000 » ) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than «Two Million and 00/100 Dollars » (\$ «2,000,000 » ) per claim and «Four Million and 00/100 Dollars » (\$ «4,000,000 » ) in the aggregate.

§ B.3.2.11 Not used.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than «One Million and 00/100 Dollars » (\$ «1,000,000 » ) per claim and «One Million and 00/100 Dollars » (\$ «1,000,000 » ) in the aggregate for aircraft liability.

### § B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

« »

**§ B.3.3.2** The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

**§ B.3.3.2.1** Not used.

**§ B.3.3.2.2** Not used.

**§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than  » (\$  ») per claim and  » (\$  ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

**§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

**§ B.3.3.2.5** Property insurance on an “all-risks” completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

**§ B.3.3.2.6** Not used.

**§ B.3.4 Performance Bond and Payment Bond**

**§ B.3.4.1** The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	Full Contract Sum
Performance Bond	Full Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**§ B.3.4.2** The Construction Manager shall provide payment and performance bonds for all subcontracts in excess of One Hundred Thousand and 00/100 Dollars (\$100,000) from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, having a penal sum equal to the cost of the Subcontract listing the Construction Manager and Owner as dual obligees, and shall be in a form acceptable to the Owner.

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »

# DRAFT AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

«Alterations »  
«ACES at 670 Wintergreen »  
«670 Wintergreen Ave. »  
«Hamden, CT 06514 »

### THE OWNER:

(Name, legal status and address)

«Area Cooperative Educational Services Corp. (ACES) »  
«350 State Street »  
«North Haven, CT 06473 »

### THE ARCHITECT:

(Name, legal status and address)

«Silver/ Petrucelli + Associates»  
«3190 Whitney Avenue »  
«Hamden, CT 06518 »

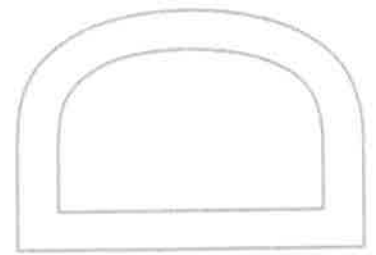
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**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.



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**1.1.3**  
 Written Consent  
 1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,  
 13.2, 13.3.2, 15.4.4.2  
 Written Interpretations  
 4.2.11, 4.2.12  
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 1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and the applicable standards, codes and ordinances as they relate to performance of the Work, the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirements; either or both in accordance with the Owner's interpretation.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor, except that the Owner shall be deemed a third party beneficiary of any subcontract as provided in Article 5. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

**§ 1.1.2.1** In the event of conflicts or discrepancies among the Contract Documents, and subject to Section 3.2.2 and Section 1.1.1, interpretations will be based on the following priorities:

- .1 Modifications and Amendments;
- .2 Addenda, with those of later date having precedence over those of earlier date;
- .3 Specifications;
- .4 Agreement;
- .5 General Conditions; and
- .6 Drawings.

#### **§ 1.1.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### **§ 1.1.5 The Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### **§ 1.1.6 The Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their

respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Not used.

**§ 1.1.9 Addendum**

Written or graphic documentation prepared by the Architect and approved by the Owner prior to the award of subcontracts that modifies or interprets bid documents, and which become part of the Contract Documents during the Construction Phase.

**§ 1.1.10 Alternate**

A variation in the requirements of the Contract Documents on which a separate price is to be received by the Owner as a part of a bid. If the Alternate is accepted in writing by the Owner, the variation is then a part of the Contract Documents and the Contract Sum shall include the amount proposed to be added or deducted on account of the variation.

**§ 1.1.11 Provide**

The term "provide", whether or not capitalized, shall mean furnish and install complete and ready for safe and regular use and/or operation of the item, material or service indicated.

**§ 1.1.12 Final Completion**

This is the stage in the progress of the Work when the Contract has been fully performed, all the Work has been completed, all punch list items have been completed and all close out documents specified in the Contract Documents have been received and approved by the Architect and a final Certificate for Payment approved by the Owner has been issued by the Architect.

**§ 1.1.13 Indicated and Shown**

The terms "indicated" and "shown", whether or not capitalized, shall mean as detailed, scheduled, or called for in the Contract Documents.

**§ 1.1.14 Bulletins**

Written or graphic documentation prepared by the Architect after the award of subcontracts that modifies or interprets bid documents, including the Drawings and Specifications. Bulletins do not authorize any extra-contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under any contract.

**§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all labor, materials, equipment, transportation, tools, appliances, appurtenance, facilities, and other items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results and make the Work complete and operable in all respects, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of sections of the Specifications.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.2.4** Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names or similar reference, no substitutions may be made unless accepted by the Owner in writing prior to execution of the Contract, or, if accepted as a change in the Work in accordance with Section 3.4.2 hereof. Where two or more products are shown or specified, the Contractor has the option to use either shown or specified.

**§ 1.2.5** All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

**§ 1.2.6** Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

**§ 1.2.7** The site, mechanical, heating ventilation and air conditioning (HVAC), plumbing and electrical Drawings are diagrammatic. Such Work shall be installed without additional cost to Owner to clear all obstructions, permit proper clearances for the Work of other trades, provide for future maintenance access, and present an orderly appearance where exposed.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, return receipt requested, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

If the parties agree upon protocols governing the development, transmission and use of Instruments of Service or any other information or documentation in digital form, they shall memorialize such protocols in writing and shall require that such provisions be incorporated into their respective agreements with consultants and contractors of all tiers.

### § 1.8 Building Information Models Use and Reliance

Unless otherwise specifically agreed upon by the parties, any building information model furnished by or on behalf of the Architect hereunder shall be prepared to a minimum Level of Development (LOD) 200, as set forth in AIA Document G202-2013, for model content and will include building systems and major components for coordination and clash detection purposes. Any use of, or reliance on, all or a portion of a building information model that is inconsistent with such LOD or without agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Not used.

§ 2.2 Not used.

### § 2.2.4 Confidentiality

§ 2.2.4.1 None of Contractor, or any of its employees, officers, directors, principals, agents, consultants or contractors, shall divulge, disclose, permit the disclosure of, release, disseminate, or transfer, whether orally or by any other means, the Confidential Information (as hereinafter defined) to anyone without Owner's prior written consent; provided, that the Contractor may without the Owner's consent share Confidential Information with (i) those of its employees, officers, directors, principals, agents, consultants, attorneys or contractors who need to receive such information in order to perform services or work relating to the Contract or the Project, (ii) as may be required in connection with the enforcement of the Contract, (iii) to the extent required by any subpoena or court order or requested by any governmental entity, or (iv) to other persons who have executed confidentiality agreements with the Owner with respect to the Confidential Information, provided further, that in all cases the Contractor notifies each such person and entity receiving Confidential Information of the confidentiality requirements of this Section 2.2.4 and of the confidential nature of such Confidential Information and directs each such person and entity receiving the Confidential Information to treat the Confidential Information confidentially and not to use it other than in connection with the performance of services or work relating to the Contract or the Project.

§ 2.2.4.2 The term "Confidential Information" as used herein shall mean all knowledge, information, data, materials, trade secrets and work product gained, obtained, derived, produced, generated or otherwise acquired by the Contractor or its employees, officers, directors, principals, agents, consultants or contractors, with respect to the Contract, the Work, the Project, the Contract Documents, the Owner or any of its schools and other affiliates, any land owned by the Owner, any real estate development plans and/or academic programmatic plans of the Owner or any of its schools and other affiliates and any permitting processes and approvals related to, and the present or projected operations or affairs of, any of the foregoing, and shall include any information and data developed in connection with any environmental testing conducted by the Contractor from time to time. The term "Confidential Information" shall not include information that becomes generally available to the public or otherwise becomes known to the Contractor but not due to actions or omissions of the Contractor or its employees, officers, directors, principals, agents, consultants or contractors in violation of this Section 2.2.4. In addition, the term "Confidential Information" shall not include the existence of the Contract or the Project in and of themselves or any information approved by the Owner in accordance with Section 2.2.4.3 below. The Owner reserves the right to control the timing of the release of any Confidential Information and the form and content of the same.



**§ 2.2.4.3** Except as otherwise expressly provided in the Contract, the Contractor shall return any and all written Confidential Information, and all copies made of such items, to the Owner upon request, subject to the Contractor's standard document retention policies. The Contractor agrees that such Confidential Information may be used by the Contractor only as permitted by the terms of the Contract. In the event that the Contractor is involved in adversarial judicial proceedings, any disclosures made by the Contractor to the extent necessary to comply with applicable law or in connection with its defense in such judicial proceeding shall not be considered a disclosure in violation of this provision, provided that the Contractor complies with the provisions of Section 2.2.4.2. Without limiting the generality of the foregoing, the Contractor agrees that, prior to disclosing to, or discussing with, whether orally or by any other means, any other person or entity of whatever kind or nature, including a corporation, government, or individual, any matter relative to the Contract, the Project or the Contract Documents that would require the Owner's approval pursuant to the terms of the Contract, the Contractor shall first notify Owner of such proposed disclosure or discussion, and consult with the Owner regarding the same, and if such matter involves the disclosure of any Confidential Information, comply with the provisions of this Section 2.2.4.3 with respect thereto.

**§ 2.2.4.4** The Contractor shall immediately notify the Owner of any court order or subpoena requiring disclosure of Confidential Information and shall cooperate with legal counsel for the Owner in the appeal or challenge of any such order or subpoena. The Contractor may disclose Confidential Information required to be disclosed pursuant to court order or subpoena, only after the Owner, as receiver has exhausted any lawful and timely appeal or challenge that Owner, as receiver, elects to file or make in connection with such court order or subpoena.

**§ 2.2.4.5** The Contractor acknowledges that money damages may not be a sufficient remedy for any violation of the terms of this Section 2.2.4 and accordingly the Owner will be entitled to specific performance and injunctive relief as remedies for any violation of this Section 2.2.4.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect above and is referred to throughout the Contract Documents as if singular in number. When separate contracts are awarded by the Owner for the design of different portions of the Work, all approvals required of the Architect under the Contract Documents shall be construed as requiring the approval of the design professional responsible for such portion of the Work that is the subject thereof or impacted thereby.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall verify the accuracy of such information furnished by the Owner by means of its experience and through site visits and shall notify the Owner of any inconsistencies. The Contractor shall exercise proper precautions relating to the safe performance of the Work. The exactness of grades, elevations, dimensions or locations given on any Drawings issued by the Architect or the work installed by a Separate Contractor, are not guaranteed by the Owner or Architect. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations, and in the exercise of its professional care, report to the Owner any inaccuracies in any information furnished by the Owner.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, in its sole discretion and as it deems most expedient, without prejudice to other remedies the Owner may have: (a) furnish, or employ a person or entity to furnish, labor, services, materials or equipment to correct, remove, replace and/or repair such default or neglect; (b) take action to regain and/or maintain the schedule; and/or (c) withhold payment as permitted under the Contract Documents. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the actual cost of correcting such default or neglect, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

#### § 2.6 Rights Cumulative

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner under the Contract Documents, at law, or in equity.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents, including without limitation, all Drawings and Specifications.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, including without limitation (i) the location, condition, layout and nature of the Project site and surrounding areas; (i) anticipated labor and supply costs; and (ii) availability and cost of materials, tools and equipment, and correlated personal observations with requirements of the Contract Documents. During the period that the Contractor is in care, custody and control of the Project site, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. During execution of the Work, the Contractor shall be solely responsible for providing a safe place for the performance of the Work as provided in the Contract Documents, including Article 10. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, in sufficient time to prevent any delay in the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions and verify all grades, elevations, dimensions and locations at the site affecting it. Any defects resulting from the Contractor's failure to comply with its obligations under this Section shall be promptly rectified by the Contractor without additional cost to the Owner. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner and Architect, as a request for information in such form as the Architect may require, any errors, inconsistencies or omissions that the Contractor observes or becomes aware of in the Contract Documents or between the Contract Documents and the field conditions, or if a portion of the Contract Documents is at variance with applicable law. The Contractor shall not proceed with Work affected by such errors, omissions, inconsistencies or variances without the Architect's response to such request for information. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor, and not the Owner, shall be solely responsible for, and have control over, charge of and responsibility for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures will not be safe with the proper exercise of safety precautions and programs required hereunder, the Contractor shall give timely notice to the Owner and Architect before proceeding further with such portion of the Work and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Owner or Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 If part of the Work is adjacent to or dependent upon work by a Separate Contractor or the Owner's own forces, the Contractor shall meet and coordinate with such Separate Contractor or forces prior to proceeding with that portion of the Work.

§ 3.3.5 The Contractor shall ensure that sufficient personnel are employed at the Project site in order to complete the Project in accordance with the construction schedule and in accordance with the Owner's objectives as to cost and quality.

§ 3.3.6 The Contractor shall ensure that personnel performing the Work comply with the approved logistics plan for the use of the site and its surroundings, parking, temporary facilities, utilities, staging and storage for the Project, including phasing, in coordination with the needs of the Owner and the requirements of governmental authorities.

#### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Substitutions and Alternates may be rejected in the Owner's sole discretion. Substitutions and Alternates will be considered only if: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations; (ii) specified products are unavailable through no fault of the Contractor or any Subcontractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in a designated space; (iv) the manufacturer or fabricator refuses to certify or guaranty the performance of the specified product as required; or (v) in the sole judgment of the Owner, it would be substantially in the Owner's best interests in terms of cost, time or other considerations.

§ 3.4.2.1 No time extensions shall be allowed nor any responsibility assumed by the Owner by reason of the Contractor's submission of a request for a substitution, whether such request is approved or denied.

§ 3.4.2.2 Notwithstanding the Owner's approval of any substitution, the Contractor shall be responsible for additional costs incurred by the Architect and other trades for changes made necessary to accommodate the substituted item.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall employ or hire only Subcontractors that are capable of working harmoniously with all trades, crafts or other individuals associated with the Project and with Owner's own forces and Separate Contractors. The Contractor shall use its best efforts to minimize the likelihood of any jurisdictional disputes among trades, strike, work stoppage or other labor disturbance.

#### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents or which carry a separate warranty shall be issued in the name of the Owner, or shall be transferred to the Owner upon purchase or delivery, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Subject to the provisions of Section 12.2.2, all warranties shall be for a period of twelve (12) months from the date of Substantial Completion of the entire Project, except for: (a) equipment requiring commissioning, the warranties of which shall commence upon the Owner's receipt of the commissioning agent's final report; and (b) longer warranty periods that are specifically called for in the Specifications or otherwise provided by law. Warranties shall be in form and content consistent with industry standards. The warranty obligations hereunder shall survive acceptance of the Work by the Owner and Architect and termination of the Contract, and shall be in addition to and not in limitation of any other warranty or remedy required by law or the Contract Documents.

### § 3.6 Taxes

The Owner is tax exempt under Internal Revenue Code Section 501(c)(3). The Contractor shall familiarize itself with current, applicable tax statutes, regulations and procedures. The tax on the sale of such services, materials or supplies that is available for exemption by such statutes and regulations shall not be included as part of the price for any Work performed or included in an Application for Payment. A tax exemption certificate is available from the Owner for purchases pertaining to the Project.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work. The Contractor shall secure all certificates of inspection, use, occupancy, permits and licenses, and post and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use and occupancy shall be delivered to the Owner upon Substantial Completion of the Work.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable federal, state and local laws, statutes, ordinances, codes, approvals, rules and regulations, and lawful orders of public authorities applicable to performance of the Work, including those applicable to construction procedures, wherever conducted, in execution of, or support of, any portion of the Work.

§ 3.7.3 If the Contractor performs Work that it knows or should have known to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions that were known by, that were disclosed to, or that reasonably should have been known to the Contractor in the proper exercise of its obligations hereunder.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but

shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 promptly after actual costs of allowances become fixed, the Contractor shall submit to the Owner a proposed Change Order, and the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2, if any.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

**§ 3.8.4** All savings realized in reconciling an allowance shall be solely the property of the Owner, and may not be allocated to other line items without the express, written consent of the Owner.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent and project manager shall represent the Contractor, and communications given to the superintendent and/or project manager shall be as binding as if given to the Contractor. Individuals employed at the Project site must be acceptable to and approved by the Owner, and shall be replaced upon the reasonable request of the Owner with individuals acceptable to and approved by the Owner.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent and project manager.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent and/or project manager unless by resignation or discharge from the employ of the Contractor, without the Owner's prior consent.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's baseline construction schedule for the Work and, to the extent required by the Contract Documents, for the entire Project. The baseline schedule and all schedule updates shall clearly delineate the following, in detail appropriate for the Project: (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) all Subcontractor start and finish dates, realistic activity sequences and durations; (5) critical dates by which Shop Drawings, Product Data, Samples and other submittals must be processed; (6) times by which products requiring long delivery lead times must be procured; (7) commissioning and closeout process (with input and consent of the Owner's commissioning agent); (8) anticipated dates for Separate Contractors, if any, to coordinate their work with the Contractor's Work; and (9) items on the critical path at the time such schedule is submitted. The schedule shall provide for the orderly, sequential, expeditious and practicable progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. No activity in the baseline schedule or any schedule update shall exceed 25 days in duration

without the Owner's express written authorization. The Contractor shall update the construction schedule on a monthly basis, or more frequently as necessary to keep the Owner apprised of the progress of the Work. Construction schedule updates shall conspicuously note any changes to the prior submitted schedule update. The Contractor shall provide the baseline schedule and all schedule updates in native electronic format, with all information and data therein accessible for the Owner's review. The construction schedule shall not modify or extend the Contract Time or any key milestones specifically identified in the Contract Documents without the prior approval of the Owner in each instance.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule, as the first submittal prior to any other submittals, for the Architect's and Owner's review and approval. The Architect's and Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall collaborate with the Architect to establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect, and in strict accordance with the Contract Time, and with any key milestones specifically identified in the Contract Documents. The Contractor shall monitor the progress of the Work for conformance with the construction schedule and shall promptly notify the Owner of any actual delays or reasonably anticipated delays. In the event of any actual or reasonably anticipated delays, the Contractor shall propose an affirmative plan to overcome the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report or schedule update constitute an adjustment in the Contract Time or the Contract Sum.

**§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. The Contractor will maintain a set of as-built documents on site consisting of marked-up field Drawings showing final as-built field dimensions and conditions, recording the Work as actually performed to the extent that the information differs from or supplements original Contract Documents. The Contractor will continuously update such documents throughout the Work duration and report on them monthly to the Owner. These documents shall be in such form, software and level of detail as the Owner may require as noted in the Project Specifications, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.11.1** The Contractor shall make available at the Project site on a current basis records of all subcontracts, purchase orders, materials, equipment, maintenance and operating manuals and instructions, warranties, and any other related documents and revisions that arise out of any subcontract or the Work. The Contractor will make records stored at its home office available to the Owner at the Project site on the Owner's request. At the completion of the Project, the Contractor shall deliver all such records to the Owner.

**§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed

in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials and field measurements with all new and existing work, coordinate the information with previously submitted Shop Drawings, Product Data and Samples and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals for dimensional accuracy and coordination with the requirements of the Work and of the Contract Documents. Any intended deviation from the requirements of the Contract Documents shall be conspicuously identified. Measurements not available prior to the presentation of a Submittal shall be conspicuously noted as not available and, to the extent reasonably possible, such measurements shall be obtained and incorporated into the Submittal by the submitting person or entity prior to fabrication.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically and conspicuously identified and notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility to comply with the Contract Documents or for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific, conspicuous attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such conspicuous notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures or its responsibilities under the Contract Documents. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals,



provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

**§ 3.13.1** The right of possession of the premises and the improvements made thereon by the Contractor and its Subcontractors of all tiers shall remain at all time in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine its equipment, apparatus, materials storage and operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other such adversity is solely the responsibility of the Contractor.

**§ 3.13.3** The Contractor shall accept delivery and arrange storage, protection, insurance and security, at Owner's expense, for all Owner-purchased materials, systems and equipment, if any, which are a part of the Work until such items are turned over to the Subcontractors and cause all such materials, systems and equipment to be insured under the builder's risk policy, if the Contractor is obligated to carry such policy pursuant to this Agreement, with any increase in the premium of such policy paid for by Owner without any additional fee or mark-up charged by Contractor.

**§ 3.13.4** While working in occupied areas, the Contractor shall conduct all Work so as to maintain the privacy of the Owner's operations, invitees, students and staff.

**§ 3.13.5** The Contractor shall require each worker to dress appropriately in a clean, neat and professional manner and to conduct themselves with respect and courtesy.

**§ 3.13.6** The Contractor shall control the volume of communication radios and loudspeakers to avoid creating a nuisance.

**§ 3.13.7** The Contractor shall not use Owner's tools, equipment or machine shop facilities without the prior, written consent of the Owner's representative.

**§ 3.13.8** If the Contractor documents the Work in progress through photo, video and/or audio recordings, it shall do so only after receiving written approval from the Owner and in compliance with the Owner's standard operating procedures and policies regarding security, privacy, confidentiality and use. The Owner may install cameras at or adjacent to the Project site during the Work, and the Contractor shall provide reasonable opportunity and access for the Owner to do so.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

**§ 3.15.3** Burning of waste materials and rubbish at the job site is not permitted. Removal and proper disposal of all waste material and rubbish is included in the Contract Sum.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its directors, board members, affiliates, the Architect, Architect's consultants, and representatives, officers, shareholders, agents consultants, employees, successors and assigns of any of them from and against any and all liability, costs, claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, to the extent caused by the violation of laws, breach of contract, negligent acts or omissions, or intentional misconduct of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under insurance coverage required by the Contract Documents, workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** As pertains to Section 3.18, the Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Contractor where there is not a commonality of interests between the Owner and the Contractor or as to claims that are not insured. The Contractor expressly consents to the Owner's selection of legal counsel and waives any waivable conflict.

**§ 3.18.4** In its contracts with Subcontractors and consultants, the Contractor shall include an indemnity obligation in substantially the same form as this Section 3.18, running directly from the Subcontractor or consultant to the Owner.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2.

**§ 4.1.2** Not used..

## **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect shall have no authority to order any extra-contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall report promptly to the Owner any objectionable Work at the time discovered reasonably should have been discovered. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality the Work, and promptly provide written reports to the Owner of its site visits, which shall note: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, (3) defects and deficiencies observed in the Work and (4) any Work rejected by the Architect or additional inspections or testing required by the Architect. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 4.2.4 Communications**

The Owner encourages direct communication between and among the representatives of the Owner, Architect and Contractor at all times during the Project for the purpose of the timely sharing of Project data and information. Written communications between or among the Contractor, Architect or Owner shall be copied to each of them, unless the Owner in its discretion determines otherwise with respect to specific communications. The Contractor, Architect and Owner shall endeavor to communicate with consultants and Subcontractors of each other through the designated representatives of the entity that retained such consultant or Subcontractor.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has the obligation to recommend that the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend that the Owner reject or require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. The Architect shall submit to the Owner documentation supporting such recommendation, and the Owner may engage, at its expense, independent consultants or testing laboratories to confirm the Architect's recommendation. However, neither this obligation of the Architect nor a decision made in good faith in the exercise thereof shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval

of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site.

§ 4.2.11 The Architect will interpret and make recommendations on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Contractor shall consult with the Architect and assist as necessary in such matters. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise in a reasonably timely manner so as not to delay the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 The term 'Specialist' or 'Specialty Contractor' as used in the Specifications shall mean an individual or firm of established reputation for Work of comparable type, size and complexity, or, if newly organized, whose personnel have previously established a reputation in the same field for Work of comparable type, size and complexity, which is regularly engaged in, and which maintains a regular force of workmen skilled in either manufacturing or fabricating items required by the Contract Documents, installing items required by the Contract Documents, or otherwise performing Work required by the Contract Documents.

- .1 Where the Specifications require installation by a 'Specialist', that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform such work under the manufacturer's direct supervision.
- .2 All other requirements and provisions contained in these documents pertaining to Subcontractors and Sub-subcontractors are applicable to Specialty Contractors.

**§ 5.1.4** If good industry practices or governmental authorities require certain expertise, registrations, certifications, licenses, permits or training for the performance of the Work, or any part thereof, the Contractor shall ensure that persons or entities performing such portions of the Work obtain and hold such qualifications.

**§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of such information, the Architect or Owner may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall supply Owner with a list of the names and addresses of all Subcontractors and material suppliers on request and from time to time.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Owner may require the Contractor to use a specific consultant or Subcontractor or to change any consultant or Subcontractor previously approved, provided that the Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable and timely objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

**§ 5.2.5** If any of the Subcontractors or personnel involved in the Project is not fulfilling its responsibilities properly or complying with the Owner's policies, the Owner may require such Subcontractors or personnel to be terminated or removed and replaced as expeditiously as possible with Subcontractors or personnel acceptable to the Owner.

**§ 5.2.6** Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Owner and any of the Subcontractors, except as provided in Section 5.3.1.

**§ 5.2.7** No single sub-subcontract shall exceed Twenty-Five Percent (25%) of the subcontract value without written permission from the Owner.

**§ 5.2.8** The Contractor and its Subcontractors of all tiers are independent contractors engaged to perform the Work. Nothing herein shall make the Contractor or a Subcontractor of any tier the legal representative or agent of the Owner or to give them the right or authority to assume, create or incur liability or obligation of any kind, express or implied, against, in the name of or on behalf of, the Owner. The Contractor and its Subcontractors of each tier shall bear sole responsibility for payment of compensation and the provision of benefits to their own employees and agents.

**§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by the Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract

Documents, has against the Owner. A copy of each subcontract shall be provided to the Owner and each shall include a provision identifying the Owner as an intended third party beneficiary. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors of all tiers. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

**§ 5.3.2** The Contractor shall include in each subcontract an obligation for the Subcontractor to provide immediate notice of any material adverse change to the Subcontractor's financial condition since the date of the award, that there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Subcontractor's knowledge, threatened against Subcontractor, wherein an unfavorable decision, ruling or filing would materially adversely affect the performance by Subcontractor of its obligations under its subcontract with Contractor. If the Contractor becomes aware of any material change in the financial condition of a Subcontractor or Sub-subcontractor during the progress of the Project, the Contractor shall give the Owner prompt notice of such change.

#### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Article 14 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights under the subcontract. The Owner shall assume only those obligations of the Contractor under the subcontract incurred by the Owner after accepting the assignment.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 60 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. The Contractor shall grant the Owner's Separate Contractors access to those portions of the Work under construction prior to the anticipated date of Substantial Completion. The Owner and Contractor agree to cooperate in scheduling all entries and work by the Owner's Separate Contractors.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any

revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. Nothing in this Section 6.1.3 shall be construed as authorizing a revision to the Contract Time.

## **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent through examination and inspection with reasonable diligence by the Contractor in accordance with its obligations hereunder.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. If the Contractor incurs additional costs or is delayed because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction, then Contractor shall follow the Change procedures pursuant to Article 7 and/or the extension of time procedure pursuant to Article 8.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement between the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect at the Owner's discretion.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** The Work is to be executed in accordance with the Contract Documents. The Contractor is not to make any changes without having first received written permission from the Owner. Where detailed information in the design is lacking, the Contractor is to refer the matter to the Architect for information before proceeding with the Work.

## § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect in a form acceptable to the Owner and signed by the Owner and Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

A Change Order shall state the costs of labor, materials and equipment, including but not limited to, the number of hours of labor, the quantities of materials, the hourly rates, the unit prices, and the number of calendar days, if applicable, associated with the change in the Work. The Architect's signature on a Change Order indicates its recommendation of the change in the Work, but it shall not be a condition to its validity.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments in the Contract Sum, Contract Time and construction schedule. In no event shall a Change Order include relief prohibited by the Contract Documents.

§ 7.2.3 Notwithstanding anything to the contrary contained herein, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

## § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner or Architect at the direction of the Owner and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the adjustment shall be recorded on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum a fee or an amount for overhead and profit if set forth in the Agreement, or if no such amount is set forth in the Agreement as set forth in Section 7.5. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may require, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be strictly limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and



- .5 Costs of supervision and field office personnel directly attributable to the change to the extent demonstrated to be an additional cost by the Contractor.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner in writing of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance or credit for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment without the Owner's express, written consent.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the change will be recorded in a Change Order.

#### § 7.4 Minor Changes in the Work

The Architect, subject to the Owner's approval, may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

#### § 7.5 Subcontractor Overhead and Profit

§ 7.5.1 For any adjustments to the Contract Sum based on methods other than unit prices, limitations on overhead and profit of Subcontractors of all tiers shall be as follows:

- .1 For Work performed by the forces of a Subcontractor of any tier, an amount not to exceed ten percent (10 %) of the costs set forth in Section 7.3.4, with a maximum cumulative amount not to exceed fifteen percent (15%) for Subcontractors of all tiers involved in such change.
- .2 To facilitate checking of quotations for extras or credits, the Contractor shall include with all proposals a complete itemization of the costs incurred and avoided by the Contractor and Subcontractors, including labor and material.

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date determined in accordance with Section 9.8.

§ 8.1.4 The term "day", whether or not capitalized, as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 Progress and Completion

§ 8.2.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE CONTRACT. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously in accordance with the construction schedule with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall at all times ensure that each Subcontractor is providing and maintaining sufficient skilled workmen, materials and equipment to achieve Substantial Completion within the Contract Time. Absent Change Orders signed by the Owner or a delay for which the Contractor is entitled to an extension of time by Section 8.3.1, the Contractor shall not make any claims for additional payment of straight time, overtime or premium time in undertaking to achieve Substantial Completion of the Work in accordance with the construction schedule. The burden of lost time and costs related to any Subcontractor's nonperformance shall not be charged to Owner unless such nonperformance is attributable to delay for which the Contractor is entitled to an extension of time by Section 8.3.1.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work due to no fault of its own and by (1) the wrongful act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by unforeseeable labor disputes, fire, unavoidable delay in deliveries, unavoidable casualties, abnormally severe weather conditions documented in accordance with Section 15.1.6.2; or (4) by delay authorized in writing by the Owner pending mediation and binding dispute resolution, then, provided that Contractor has complied with its obligations hereunder, the Contract Time shall be extended for such reasonable time as may be required. The Contractor acknowledges and agrees that shortage of funds or inadequate capitalization on its own behalf, labor disputes, and industry-wide economic fluctuations impacting price, availability or delivery time or conditions shall not excuse its non-performance as a force majeure event or otherwise, and the Contractor shall bear all risk of monetary loss and delay. Should an event or occurrence affect the Contractor's ability to perform hereunder, the Contractor shall use its best efforts to eliminate the cause of such inability to perform and shall perform to the fullest extent it is able under the circumstances.

§ 8.3.1.1 Notwithstanding the foregoing, the parties acknowledge that impacts due to the Coronavirus/COVID-19 outbreak, including but not limited to, health emergencies, pandemics, shutdowns, quarantines, shortages or unavailability in labor, equipment and/or materials, financial shocks, supply chain and/or travel disruptions, additional personal protective equipment, medical checks and/or governmental or quasi-governmental delay, guidance or directives ("Coronavirus Impacts") may affect the ability to meet the construction schedule. The Contractor will use all reasonable efforts to include the costs for COVID-19 cleaning, social distancing measures and associated personal protective equipment and supplies in the Contract Time and Contract Sum.

§ 8.3.1.2 The Contractor has used all reasonable efforts to identify in advance of final acceptance of the Contract Time and Contract Sum any Coronavirus Impacts that could have a specific impact on the Project's costs or schedule. Except as specifically set forth herein, Coronavirus Impacts are foreseeable and contemplated, and the Contractor shall not claim any increase in its price, cost reimbursement, escalation of labor or material costs, compensation or damages for any delay, disruption or interference due to any Coronavirus Impacts. Notwithstanding the foregoing, if the Work is delayed for more than seven (7) consecutive business days due to "Stay at Home Orders" by governmental authorities or other work stoppages caused by Coronavirus Impacts not otherwise due to the fault of the Contractor, the Contractor shall be entitled to an equitable adjustment of the Project schedule to the extent that it demonstrates actual impacts to the schedule to the Owner's reasonable satisfaction. Furthermore, if due to unforeseeable supply chain disruptions or labor shortages directly caused by Coronavirus Impacts, no alternative product or material substitutions or labor forces are readily available, or due to future delays, orders or directives by government authorities not known as of the date of this Agreement, the Project schedule or actual construction cost is impacted, the Contractor may submit a change request that fully documents such actual

additional costs and delay incurred for review by the Owner and the Architect. Such change request shall be "open book" and subject to audit to verify actual costs to support additional time and/or additional costs.

**§ 8.3.1.3** In addition to any other relief provided pursuant to this Section 8.3.1.2, if the Contractor experiences an increase in its baseline price for any particular material, equipment or commodity set forth as a line item in the Contract Sum ("Baseline Price") of greater than 15% ("Price Impacted Materials"), the Contractor shall notify the Owner in writing within thirty (30) days from the date that Contractor has actual knowledge of the basis for an equitable adjustment to the Contract Sum and shall provide reasonably requested documentation substantiating such adjustment to the Owner's reasonable satisfaction, including reasonable evidence that the Baseline Price included in the Contract Sum was reasonable and in general alignment with market prices as of the date thereof and evidence of Contractor's reasonable efforts to find alternative sources of material, equipment supply, and/or labor as close as reasonably possible to the original/non-impacted prices and/or estimates. In the event of an increase in a Baseline Price for a Price Impacted Material(s), the Contract Sum shall be equitably adjusted to reflect such increase in excess of 15% over the Baseline Price. An adjustment in the pricing for Price-Impacted Material shall not include any amount for overhead and profit. Notwithstanding the foregoing, Contractor shall use best efforts to lock in pricing with each subcontractor that includes the subcontractor's acknowledgment that the subcontractor's price is sufficient for its performance of its entire scope of work and includes amounts for foreseen and unforeseen circumstances and cost escalations.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** The Contractor's sole remedy for delays excusable under Section 8.3.1 is an extension of time as provided herein, direct field personnel expenses, general conditions, and Subcontractors' actual field costs, for the period of extended duration. The Contractor waives all home office overhead damages and profit for delays and allocated portions of indirect or general overhead expenses incurred by it or anyone claiming through it. Such amounts shall be compensable to the extent that they do not arise from any dispute between the Owner and the Contractor or the Contractor's failure to act in accordance with this Agreement, and only up to the amount then available in the contingency, if any, established by the Contract Documents.

**§ 8.3.4** The Contractor shall not be entitled to costs for delay to any early completion date elected by the Contractor or those for whom it is responsible.

**§ 8.3.5** If, in the opinion of the Owner, the Contractor falls behind the approved schedule and such delay is not excusable under this Section 8.3, the Contractor shall take all steps necessary to improve its progress, including those that may be required by the Owner, without additional costs to the Owner. In these circumstances, the Owner may require the Contractor, at no additional cost to Owner, to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedule or "recovery" schedules in such detail and form as the Owner deems necessary to demonstrate how the approved rate of progress shall be regained.

**§ 8.3.6** Requests for extension of time shall set forth in detail the circumstances of such claim, the date upon which claimed delay began and, to the extent such information is available at the time the date upon which the delay ended, and the number of days' extension of time requested. The Contractor shall provide supporting documentation as the Owner may require, including a revised critical path method construction schedule indicating the effect of the circumstances that form the basis for the claim. The Contractor shall not be entitled to an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.

**§ 8.4** The Contractor shall not be entitled to an adjustment of the Contract Sum or Contract Time on account of delays: (i) that it could have avoided or mitigated using its best professional efforts; (ii) that do not impact the critical path; (iii) for which there is available float in the chain of activities affected by the delay; (iv) that were caused by, or could have been reasonably anticipated by, the Contractor or those for whom it is responsible; or (v) that could have been mitigated or avoided by the Contractor's timely notice to the Owner as required hereunder.

**§ 8.5** The Owner may direct the Contractor to take such action, including adding, increasing or supplementing the workforce, the number of shifts, the days of work and/or overtime operations, as necessary to minimize threatened delays to Substantial Completion, and the Contractor shall adjust the schedule on account of such directives. The

Contract Sum may be adjusted on account of such acceleration only to the extent that the acceleration is due to a delay that is excusable under Section 8.3.1.

§ 8.6 If a delay that is not compensable occurs concurrently with a delay that is compensable, the period of concurrency will be deemed a concurrent delay, and the Contractor will be entitled to an adjustment of the Contract Time and Contract Sum only for the period that the delays are concurrent.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner or the Architect. This schedule shall be subject to the Owner's review and approval and shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 The schedule of values shall be revised to reflect Change Orders signed by the Architect, Owner and Contractor in accordance with Section 7.2.

§ 9.2.3 The schedule of values shall include a separate line for each section of the Specifications, each allowance, the Contractor's overhead costs, any contingency, insurance premiums, each unit price, each Change Order, and the Contractor's fee or profit. All line items valued in excess of \$75,000 shall be supported by a separate schedule, broken down by appropriate work functions, such that no line item in such schedule shall exceed \$75,000. Line items on summary sheets shall be of adequate specificity so that they may readily be used to evaluate the progress of the Work in preparing and reviewing periodic Applications for Payments to the satisfaction of the Owner and Architect. Line items shall be broken down showing labor, materials and equipment. The schedule of values shall identify the line items by building, floors, sections and phases of the Work, as applicable.

### § 9.3 Applications for Payment

§ 9.3.1 No later than the 20<sup>th</sup> day of each month, the Contractor shall submit to the Owner and Architect a pencil copy of an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. The application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, including copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers as required herein, and shall reflect retainage if provided for in the Contract Documents.

No later than the first day of the following month, the Contractor shall submit to the Owner and Architect a complete, proper and correct certified Application for Payment. Interest shall not accrue or be payable on retainage. The Contractor's Applications for payment shall specifically indicate that all applicable taxes are included, and the Contractor shall require the same of its Subcontractors. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet and by such data substantiating the Contractor's right to payment as the Owner or Architect may require. The Contractor shall furnish the Owner, with each Application for Payment, the documentation set forth in Section 9.3.4.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, provided the Owner has provided its express, written consent to the Contractor.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to promptly pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Applications for Payment shall not include requests for payment for proposed changes in the Work, change requests, or changes in the Work unless a Change Order has been signed by the Architect, Owner and Contractor and the Contractor has fully complied with the provisions of Sections 7.1 and 7.2 of this Agreement.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

When any Application for Payment includes materials stored off the Project site or stored on the Project site but not yet incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the Application for Payment. Suitable storage which is off the Project site shall be a bonded warehouse or appropriate storage approved by Owner with the stored materials properly insured, tagged and identifiable for this Project and properly segregated from other materials. The Owner's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in Owner's sole reasonable discretion.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment, free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that the Contractor shall remain responsible for damage to or loss of the Work not caused by Owner or Owner's Separate Contractors, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

**§ 9.3.4** The Contractor's Applications for Payment shall be accompanied by:

- .1 A list of names and addresses of each person or entity that furnished labor, services, materials or equipment on behalf of the Contractor;
- .2 Unconditional progress releases and lien waivers, in a form acceptable to the Owner, from the Contractor, Subcontractors and Sub-subcontractors for all labor, services, materials and equipment furnished to the Project through the period covered by the previous Application;
- .3 Applications for Payment and invoices from all persons or entities whose work is included in the Contractor's Application for Payment;
- .4 A construction schedule update;
- .5 Written warranties from Subcontractors, manufacturers and installers covering portions of the Work that have reached Substantial Completion;
- .6 A Change Order log, including all proposed, pending, and approved Change Orders; and
- .7 Such other data, accounts and receipts substantiating costs included in the Application for Payment as reasonably requested by the Owner.

**§ 9.3.5** The Contractor's and Subcontractors' Applications for Payment shall be signed and notarized, which signature shall constitute a representation and warranty that:

- .1 the amounts sought are due and earned in accordance with the Contract Documents;
- .2 all applicable taxes are included in such Application for Payment;
- .3 the Work is progressing in accordance with the schedule and the Substantial Completion date established herein;

- .4 all required as-built documents described in Section 3.11 are up to date;
- .5 they shall use the amounts requested to discharge their financial obligations on account of labor, services, materials or equipment furnished to the Project and included in the Application for Payment;
- .6 they have discharged their financial obligations on account of labor, services, materials or equipment furnished to the Project for which the Owner has made payment;
- .7 to the best of their knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services, labor, materials and/or equipment to the Project on their behalf; and
- .8 title to all Work covered by the application has passed to the Owner no later than the time of payment.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within ten days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents and that the Architect recommends that the Owner release payment in the amount certified. The foregoing representations are subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance or payment of a Certificate for Payment will not be a representation that the Architect or Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Notwithstanding anything to the contrary in the Contract Documents, the Owner shall not be obligated to release payment to the Contractor until the Owner is satisfied that the Work has progressed to the point indicated in the Application for Payment, that the quality of the Work is in accordance with the Contract Documents and that withholding permitted under the Contract Documents is not required. Payment by the Owner of any Certificate for Payment shall not be deemed to waive any of the Owner's rights to later claim that the Work covered by a Certificate for Payment was not properly completed or not completed in accordance with the Contract Documents.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect shall withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Owner may withhold payment and the Architect shall withhold a Certificate of Payment or, because of subsequently discovered evidence, either may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be required by applicable law or necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including without limitation loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 mechanic's liens or claims of nonpayment by Subcontractors of any tier for services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 losses for which the Owner is entitled to indemnity from the Contractor under the Contract Documents.

**§ 9.5.2** When the Contractor disputes the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

**§ 9.5.3** The Owner may apply any amounts withheld as the Owner may deem proper to satisfy or set off against Claims, secure its protection, complete the Work or compensate itself for losses suffered by reason of nonperformance or default and deduct such amounts from the Contract Sum by Change Order. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or equipment suppliers for Work properly performed or material or equipment suitably delivered, and such payment shall be deemed to have been made on account of the payee and all tiers between the payee and the Owner. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. Any payment made by the Owner by joint check shall not be construed as a promise to assume the debt of any joint payee, nor as a continuing obligation to make joint payments, nor as an assumption or establishment of a direct contractual relationship with the payee unless expressly stated in a separate written agreement with such payee.

#### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment to the Contractor in the manner and within forty-five (45) days after the Architect has approved such Certificate for Payment, and shall so notify the Architect. The Owner shall not be deemed in default by reason of withholding payment in accordance with the Contract Documents or while any default by Contractor or any Subcontractor remains uncured.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner may require written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. The Owner may contact Subcontractors and suppliers to verify amounts included in Applications for Payment and to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any

fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** The Contractor and its surety shall (i) defend, hold harmless and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier; (ii) cause any such lien claims to be removed within fifteen (15) days of receipt of notice from the Owner by posting an appropriate bond or other procedure permitted by law; (iii) prosecute and defend all proceedings or suits by such lienors; and (iv) to pay any amounts secured by such liens or encumbrances that are the responsibility of the Contractor. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. In the event a lien is not so discharged, the Owner shall have the right to discharge said lien and recover from the Contractor all costs associated therewith, including but not limited to the Owner's attorney's fees incurred in having the lien discharged.

## **§ 9.7 Failure of Payment**

**§ 9.7.1** If, through no fault of the Contractor, the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount properly due and owing or awarded by binding dispute resolution, then the Contractor may, upon ten additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up.

**§ 9.7.2** The Contractor is obligated to continue and complete all its Work and obligations under the Contract when Change Orders, Change Directives or Claims are pending or the Parties are in the process of dispute resolution, including without limitation any Work required to be performed related to the Change or Claim. The Contractor shall not stop, suspend, or delay any portion of the Work, and will be responsible for all expenses, costs and fees arising from any such stop, suspension or delay.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and applicable permits and approvals so that the Owner can occupy or utilize the Work for its intended use, with only minor punch list items remaining. The Work will not be considered suitable for Substantial Completion review, and the Contractor shall not be deemed to have achieved Substantial Completion until: (i) all Project systems included in the Work have been started up, tested, and are operational as designed and scheduled; (ii) to the extent reasonably required, the Contractor has instructed Owner's personnel in the operation of all systems and equipment; (iii) the site has been cleaned up and restored, including without limitation removal of excess materials, rock, sand, paving, debris, supplies, equipment and trailers, and disconnection of temporary utilities, and (iv) the Contractor has arranged for and obtained all designated or required governmental inspections, written approvals, and certifications necessary for legal use and occupancy of the completed Project.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment and which will not substantially hinder or interfere with the Owner's intended use of the Project. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, promptly complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion, shall record the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall



commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Contract Documents or Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, the Owner shall reduce the amount withheld as retainage to 2.5% of the payment otherwise due to the Contractor. Further upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion of the Work to be substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection. When the Architect and Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will issue final payment. Such final payment will be based on the Owner's knowledge, information and belief that the Work has been completed in accordance with the Contract Documents.

**§ 9.10.2.1** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner evidence of compliance with all requirements of the Contract Documents including without limitation, all notices, certificates, affidavits and other requirements to complete obligations under the Contract Documents, including but not limited to: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior notice has been given to the Owner; (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) delivery of keys to the Owner with keying schedule (master, sub-master and special keys), if required by the Contract Documents; (6) delivery to the Owner of all warranties, including without limitation, all manufacturer's warranties and certificates of inspections; (7) delivery to the Owner of written operating, servicing, maintenance, and cleaning instructions for all Work, and attic stock, spare parts, parts lists and special tools for mechanical and electrical equipment, in approved form; (8) delivery to the Owner of specified as-built documents, including without limitation the documents described in Section 3.11; (9) delivery to the Owner of all final certificates for use and occupancy of the completed project; (10) completion of all touch-up painting, delayed final finishes and punch list items; (11) delivery to the Owner of all other submissions required by the Contract Documents including without limitation, final construction schedule; (12) final cleanup, including touch-up of marred surfaces; and (13) other data establishing payment or satisfaction of obligations, such as receipts, final releases and waivers or liens, claims,

security interests or encumbrances arising out of Contract from the Contractor and every Subcontractor and major material suppliers, to the extent and such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner and indemnify, defend and hold the Owner harmless for all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.2.2** As a precondition to receiving Final Payment, the Contractor shall deliver to the Owner a complete set of "as-built" Drawings, consisting of marked-up field plans showing final as-built field conditions, dimensions and conditions including, without limitation, those relating to the heating, air-conditioning and ventilation systems and the electrical, plumbing and life safety systems, recording the Work as actually performed to the extent that the information differs from or supplements original Contract Documents.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment;
- .5 matters expressly excluded by the Owner or the Architect as unsettled as of the date of making final payment; or
- .6 Owner's rights to indemnification and claims for latent defects.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing pursuant to the Contract Documents and specifically identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall, to the exclusion of the Owner, exercise control over the Project site and shall be exclusively responsible for managing, superintending, directing and overseeing the conduct of persons and entities performing of the Work. Prior to the commencement of construction work on site, or earlier upon the Owner's request, the Contractor shall prepare and submit a safety plan in conformance with the Owner's most current safety policies and with applicable safety and health-related laws, regulations, ordinances and codes, as they may be amended from time to time.

**§ 10.1.1** The Contractor shall provide all personal protective equipment and facilities and shall follow all procedures required by the safety plan and Occupational Safety and Health Act, including without limitation providing and posting all required posters and notices, and shall otherwise be responsible for complying with applicable safety laws.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall develop a safety program for the Owner's review which shall identify on-site safety and any other safety precautions which may be required during construction of the Work. The Contractor agrees that its responsibility for safety is non-delegable and acknowledges that the Owner's review of the Contractor's safety program does not relieve the Contractor of such responsibility. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, and other property (real and personal) of the Owner under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall immediately notify the Owner of any injury to persons or property if damaged on site or related to the Work.

**§ 10.2.3.1** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.3.2** When required by law or for the safety of the Work or adjoining property, the Contractor shall shore up, brace, underpin and protect foundations and other portions of existing structures which are in any way affected by the Work. The Contractor, before commencement of any part of the Work, shall give any notices required to be given to adjoining landowners or other parties.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel shall provide notice to the Owner of the existence and location of hazardous materials.

**§ 10.2.5** The Contractor shall promptly remedy or repair damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, immediate notice of the injury or damage, whether or not insured, shall be given to the other party after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that caused death, bodily injury or property damage, giving full details and statements of any witnesses. Such reports shall be made immediately by telephone or messenger to the Owner and Architect in the event of death, serious bodily injury or serious property damage, with a full written report to follow within three working days.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances, as defined by applicable law. If the Contractor encounters a hazardous

material or substance previously unknown to it or not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. The Contractor shall take all reasonable precautions to avoid further contamination or the spread or disturbance of potentially hazardous substances or materials.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be remediated or contained to a safe level as mandated by applicable law. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of remediation or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been remediated or contained, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time and the Contract Sum shall be equitably adjusted, except to the extent Contractor contributed to the hazardous condition.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are expressly required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances expressly required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs: (1) for remediation of and damages caused by hazardous materials or substances the Contractor brings to the site and/or negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred unless the Contractor knew or had reason to know that its activities, even if directed by Owner, violated applicable law.

**§ 10.3.7** Prior to introducing any hazardous materials to the Project site, the Contractor shall provide the Owner with a safety data sheet (SDS), information about precautionary measures necessary to protect persons or property and an indication of the type of labeling system in use.

**§ 10.3.8** In the event that during the performance of the Work the activities of the Contractor or any Subcontractor, or any person or entity for which the Contractor is responsible, causes the incursion of mold at the Project site, the Contractor shall be responsible for and bear the entire cost of mitigation of any mold to the satisfaction of the Owner.

**§ 10.3.9** As a precondition of achieving Final Completion and to receiving Final Payment, the Contractor shall provide a sworn statement to the Owner that there are no hazardous materials or substances, including but not limited to, PCBs and asbestos in any of the materials and products used in the construction of the Project.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located with an AM Best rating of A, IX or better. The Owner, the Owner's Representative, the Owner's landlord, the Owner's lender (if any) and/or capital partners, its or their directors, officers, members, agents and employees, and any other parties reasonably designated by the Owner in writing shall be named as additional insureds on all liability policies required hereunder, with the exception of workers compensation/employer's liability and professional liability coverage, if any, or as otherwise described in the Contract Documents. Additional Insured on the General Liability shall be provided for ongoing and completed operations. Additional insured coverage on liability policies, with the exception of workers compensation/employer's liability and professional liability, if any, will be primary coverage to any other coverage maintained by such additional insureds and shall not permit or require such other coverage to contribute to the payment of any loss.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described herein, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then procure such coverage and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.2.3** Not used.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement, excluding any applicable deductible, or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. Notwithstanding the foregoing, the Owner does not waive: (a) its rights against the Contractor, any of its Subcontractors, Sub-subcontractors, agents or employees for damages to non-Project related property, real or personal or both, at or adjacent to the site of the Project, to the extent caused by the negligence, breach of contract, willful misconduct, or other fault of the Contractor, any of its Subcontractors, Sub-subcontractors, agents or employees; (b) its rights against the Architect, Architect's consultants, separate contractors described in Article 6, if any, or any of their subcontractors, sub-subcontractors, agents or employees, for damages to non-Project related property, real or personal or both, at or adjacent to the site of the Project, caused by the negligence, breach of contract, willful misconduct, or other fault of the Architect, Architect's consultants, separate contractors described in Article 6, if any, or any of their subcontractors, sub-subcontractors, agents or employees; and (c) claims for occurrences first arising after Substantial Completion of the Work, to the extent caused by the negligence, breach of contract, willful misconduct, or other fault of the Contractor, any of its Subcontractors, Sub-subcontractors, agents, or employees.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the Contractor's property insurance required by the Agreement shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Not used.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Owner or Architect has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an

equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## **§ 12.2 Correction of Work**

### **§ 12.2.1 Before Substantial Completion**

The Contractor shall inspect the Work of all Subcontractors to ensure that such Work is being performed in accordance with the requirements of the Contract Documents. The Contractor shall reject Work that does not conform to the requirements of the Contract Documents. The Contractor shall promptly correct, repair, replace or re-execute Work, whether or not rejected by the Owner or Architect, that is defective or fails to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall correct such defects and any condition resulting therefrom reasonably promptly, or sooner if such condition threatens the safety of the occupants of the Project.. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's or Owner's consultants' services and expenses made necessary thereby, shall be at the Contractor's expense.

### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 3.5 or Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so. . The Owner shall give such notice promptly after discovery of the condition. During such period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty unless (i) the Contractor is aware of the defect in the Work and (ii) the Owner's delay in providing notice does not prejudice the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. The Contractor's obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property caused by defective Work.

**§ 12.2.2.3** Upon completion of any Work under or pursuant to Section 12.2, the warranty shall recommence in connection with such corrected Work.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract and shall, in addition, assist the Owner in complying with all requirements of any source of construction financing.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded the Owner or the Contractor under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Owner shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.



### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### § 13.8 Construction Financing

The Contractor agrees to subordinate, and shall cause Subcontractors and suppliers of all tiers to subordinate, all of their rights and interests in the Project and the Owner's real and personal property to any those of any entity providing construction financing, and agrees to execute any document required by such entities to evidence such subordination.

### § 13.9 ACES Name

The Contractor shall not (i) mention or otherwise use the word "ACES," orally or in writing (whether alone or in combination with other words), (ii) display or otherwise use the name, emblem, logo, insignia, symbol, graphic or trademark, or any similar name, emblem, logo, insignia, symbol, graphic or trademark, of ACES, any school district or other component, constituent, or affiliate of ACES (collectively, "ACES Name"), or (iii) otherwise refer to ACES, any school district or other component or affiliate of ACES, whether in or on any sign, advertisement (including any newspaper, television or radio advertisement), commercial announcement, circular, flier or other publication, or website, without the prior written approval of the Owner, which approval may be given or withheld in Owner's sole discretion. For purposes of this Section 13.9, an affiliate of ACES shall mean any other entity which, directly or indirectly, controls, is controlled by, or is under common control with the Owner. Nothing in this Section 13.9 shall be construed to prevent the Contractor from disclosing (i) factual information of the Project set forth in this Contract to the extent permitted under Section 2.2.4 above, or (ii) such information as required by law or as necessary to enforce the terms of this Contract. The Owner will have the right to enforce the foregoing provision in judicial proceedings by a decree of specific performance and appropriate injunctive relief as may be applied for and granted in connection with such enforcement. The provisions of this Section shall survive the expiration or earlier termination of this Contract.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons, if the Contractor shows it has been materially harmed by the delay and stoppage of the Work:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

### § 14.1.2 Not used.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on completed Work only, said costs being the limit of the Owner's liability.

### § 14.1.4 Not used.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6 is declared bankrupt, has a petition in bankruptcy filed against it, or if the Contractor files for bankruptcy protection;
- .7 causes or threatens to cause or create labor unrest, dispute, picketing, slowdowns, work stoppage, strike or disharmony;
- .8 is otherwise found to have engaged in fraud, criminal acts, or otherwise immoral or unethical conduct on this or any other project; or
- .9 disregards the safety requirements of the Contract Documents

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

**§ 14.2.5** In the event that it shall be determined by an arbitration panel or court of competent jurisdiction that a termination under this Section 14.2 was wrongful or not justified, such termination shall be conclusively deemed to be a termination for convenience by Owner under Section 14.3 hereof and the sole right, remedy and recourse of the Contractor against the Owner shall be governed and determined by Section 14.3.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine. During the first 120 days of a suspension by the Owner for convenience, the Contractor may temporarily reassign its personnel, provided that such personnel must return to the Project within 30 days after the suspension is ended.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, along with reasonable overhead and profit on the Work executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law.

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor must be initiated by notice to the other party with a copy sent to the Architect. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Failure by the Contractor to give such notice within the time specified shall greatly prejudice the Owner, and the failure to submit proper and timely notice shall constitute a waiver and abandonment of such Claim.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the Contract Documents.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. In the case of a continuing delay, the Contractor shall file with the Owner written reports on the delay identifying the continuing cause of the delay no less than once a week during the duration of the delay.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were unusually severe for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of the scheduled construction.

§ 15.1.6.3 Any change request seeking an extension of the Contract Time shall contain:

- .1 a detailed description of the nature of each cause of delay, the date or dates upon which each cause of delay began and ended (as known or as projected), the number of days of delay attributable to each such cause, and the impact of such delay upon the construction schedule;
- .2 the construction schedule in effect at the start of the delay, showing that the portion of the Work that was, or will be, delayed is on the critical path and that no float remains or will be available for the delayed activities at the start of the delay;
- .3 a schedule analysis of the impact of the delay on the critical path in the construction schedule at the time of the delay, including any proposed adjustment to the Contract Time;
- .4 such other supporting data that the Owner may reasonably request.

**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes

- .1 not used;
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.1.8 Limitation on Damages**

No officer, director, shareholder, partner, agent or employee of the Owner (or any partner of a partner or any agent or employee of a partner) shall ever be personally or individually liable for damages with respect to the Contract Documents or the Work.

**§ 15.1.9** The Contractor shall include in each subcontract, and each subcontract shall be deemed to include, the limitations set forth in Sections 15.1.7 and 15.1.8 above, which shall be effective in the event that the Owner succeeds to the Contractor's rights and obligations under a subcontract.

**§ 15.2 Initial Claim Review**

**§ 15.2.1** All Claims shall be referred to executives designated by the parties involved in or linked by contract to such Claim, to act as their claim representatives. The claim representatives shall meet, as soon as conveniently possible, but in no case later than thirty (30) days after such request is made, in good faith at the Owner's request, and prior to mediation, litigation or arbitration, to endeavor to resolve the Claim on their own. If the parties are unable to resolve the Claim in this manner, the Claim shall be mediated as set forth below.

**§ 15.2.2** Not used.

**§ 15.2.3** Not used.

**§ 15.2.4** Not used.

**§ 15.2.5** Not used.

**§ 15.2.6** Not used.

**§ 15.2.6.1** Not used.

**§ 15.2.7** Not used.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association or other mutually acceptable dispute resolution administrator in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Not used.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 15.3.5** In the event that mediation is unsuccessful, all Claims arising out of and/or related to the Contract Documents, the Work or the Project shall be resolved by litigation in the Connecticut Superior Court, Judicial District of New Haven at New Haven, Connecticut. The Owner may, at its sole option, elect to file an application to have the case transferred to the Complex Litigation Docket, and the Contractor shall not oppose such transfer.

**§ 15.3.6** The Owner and Contractor both waive their rights to a trial by jury of any or all issues arising in any action or proceeding between the parties hereto or their successors, under or connected with the Contract Documents, or any of their provisions. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING, HAVE HAD THE OPPORTUNITY TO HAVE THIS AGREEMENT REVIEWED BY THEIR LEGAL COUNSEL, AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

### **§ 15.4 Arbitration**

**§ 15.4.1** The Owner may, at its sole option, elect arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation unless the parties mutually agree otherwise, any arbitration shall be conducted in accordance with the American Arbitration Association's Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration.

**§ 15.4.1.1** If the Owner consents to arbitration, a demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** The Owner, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitrations that substantially involve common questions of law or fact and employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** The Owner, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

**ARTICLE 16 NONDISCRIMINATION**

The Contractor agrees to comply with, and to require Subcontractors to comply with, all applicable laws governing equal employment opportunities, immigration and non-discrimination. To that end, the Contractor shall not discriminate in the conduct and operation of its business at the Project against any person or group of persons on the basis of sex, race, color, religion, age, disability, status as a veteran, national or ethnic origin, sexual orientation, gender identity, gender expression or any other category protected by applicable law.

**ARTICLE 17 BUSINESS ETHICS**

**§ 17.1** During the course of pursuing contracts with the Owner and while performing contract work in accordance with the Contract Documents, the Contractor agrees to maintain business ethics standards which are aimed at avoiding any real or apparent impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with the Owner.

**§ 17.2** The Contractor shall permit interviews of employees, reviews and audits of accounting or other records by the Owner representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of the Contractor's employee, agents, representatives, vendors, Subcontractors, suppliers and other third parties paid by the Contractor in their relations with the Owner's current or former employees or employee relatives.

**§ 17.3** The Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with the Owner's best interests. These obligations shall apply to the activities of Contractor's employees, agents, representatives, vendors Subcontractors, and suppliers in their dealings and relations with the Owner's current and former employees and their relatives. For example, the Contractor's employees, agents or subcontractors should not make or provide to be made any substantial gifts, extravagant entertainment, payments, loans, or other considerations to the Owner's representatives, employees or their relatives.

**§ 17.4** The Contractor agrees to notify the designated Owner representative within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article. The Contractor will be notified in writing of the Owner's designated representative in the invitation to bid and/or the notice to proceed documents issued in connection with this contract.

**ARTICLE 18 OWNER'S POLICIES**

**§ 18.1** The Contractor and all Subcontractors shall conform to the Owner's policies and standards that are applicable to the Project, as they are updated from time to time, including without limitation, safety policies set forth in Article 10 and any policies referenced elsewhere in the Agreement, General Conditions and Specifications for the Project.

## **ATTACHMENT B - MINIMUM EXPERIENCE REQUIREMENTS**

The Bidder shall have completed, as a construction manager at risk, at least two (2) **K-12 School Projects** with a construction budget of not less than Two Million Dollars (\$2,000,000.00), for Connecticut public school projects k-12 that received a certificate of occupancy within the last five (5) years, or are currently under construction, and were or are being funded by the State of Connecticut.

## ATTACHMENT C - QUALIFYING PROJECTS MATRIX

Bidder Name \_\_\_\_\_

### Qualifying Projects Matrix

Note: The project used to satisfy the minimum experience requirements set forth in Attachment B of this RFQ/P shall be identified in line item No.1 through 2 of this Attachment. Additional projects to satisfy the additional criteria shall be listed in line items No. 3 through 10 of this Attachment. This Attachment must be filled out in its entirety.

No.	Project Title	State of CT Project # (if applicable)	Owner	Owner Point of Contact Name/Phone #	Project Budget	Month/Year Of Occupancy
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						





## ATTACHMENT E - STAFFING MATRIX

### Pre-Construction Staffing Matrix

POSITION	NAME	NUMBER OF HOURS	HOURLY RATE	TOTAL PRICE*	COMMENTS
Project Executive					
Project Manager					
BIM Coordinator					
MEP Coordinator					
Project Scheduler					
Project Estimator					
Administrative Support					
Others (please List)					

\*All Staff listed in this matrix are included in the Pre-Construction Fee.

**ATTACHMENT E - STAFFING MATRIX**

**Construction Phase Staffing Matrix**

**All proposals must meet the minimum staffing requirements for the duration of construction.**

ITEM DESCRIPTION	NAME	GENERAL CONDITIONS	INCLUDED IN CM FEE	NUMBER OF HOURS	HOURLY RATE	TOTAL PRICE*	COMMENTS
Operations Manager			X				
Business Development Manager			X				
Project Executive		X					Construction Part Time
Project Manager		X					Full Time Construction
Project Superintendent		X					Full Time Construction
Assistant Project Superintendent		X					Time TBD by CM
Project Engineer		X					Full Time Construction
Administrative Support		X					Time TBD by CM
BIM Coordinator		X					Time TBD by CM
MEP Coordinate		X					Time TBD by CM
Safety Officer		X					Time TBD by CM
QA Engineer		X					Time TBD by CM
Project Scheduler		X					Time TBD by CM
Purchasing Agent			X				
Admin Support (Corp. Office)			X				
Estimator			X				
Financial Manager			X				
Financial/Cost Support(Corp. Office)			X				
Other Corp. Office Support			X				
Staff Training			X				

**TOTAL PRICE FOR GENERAL CONDITIONS STAFF: \$ \_\_\_\_\_**

**\*Only price general conditions staffing costs that are part of the stipulated lump sum amount for construction staffing. This total price should be included in the fee breakout in Attachment F**

## ATTACHMENT F - BID FORM

**Construction Manager @ Risk Firm:** \_\_\_\_\_

### Fee and Compensation Structure for Pre-construction Phase Services

Description	Fixed Fee/Compensation (In Dollars)	By Percentage (of Construction Costs)
Pre-Construction Staffing Matrix Cost (from Attachment E)	\$	%
Pre-Construction Fee	\$	%
<b>Not Used</b>	\$	Not Applicable
<b>Total Cost for Pre-construction Services</b>	\$	

### Fee and Compensation Structure Construction Phase Services

Description	Fixed Fee/Compensation (In Dollars)	By Percentage (of Construction Cost)
Estimated Construction Cost (Direct Trade Work)	\$ 2,746,991	100%
Stipulation Sum Construction Staffing Cost (from Attachment E)		%
Stipulated Sum General Conditions Cost/Expenses		%
Construction Managers Fee		%
CM Contingency will be 3% when establishing GMP		3%
<b>Total Cost for Construction Phase Services</b>		

	(In Figures)	(Amount in Words)
<b>Total Cost of Pre- Construction &amp; Construction Phases</b>		

## ATTACHMENT G - CONSTRUCTION MANAGER TASK MATRIX

Item Description	Construction Manager	Supplied by Trades	Supplied by Owner	Comments
<b>PRE-CONSTRUCTION SERVICES</b>				
All BIM Requirements	X			Also refer to Attachment J & Establish Protocols
Cost Estimates	X			
Value Management	X			
Constructability Reviews	X			
Schedule with Updates	X			
Purchasing Plan	X			
Logistics Plan	X			
Safety Plan	X			
Close out Procedures	X			
Attend Meeting	X			
Pre-Construction Reports (a report on the above items at each Phase of design)	X			A detailed Pre-Construction report is required at all Phases of Design Documents
<b>CONSTRUCTION SERVICES</b>				
Project Executive	X			
Project Manage	X			
Project Superintendent	X			
Assistant Project Superintendent	X			
Project Engineer	X			
Administrative Support	X			
BIM Coordinator	X			
MEP Coordinate	X			
Safety Officer	X			
QA Engineer	X			

Item Description	Construction Manager	Supplied by Trades	Supplied by Owner	Comments
Project Scheduler	X			
Purchasing Agent	X			
Admin Support (Corp. Office)	X			
Estimator	X			
Travel & Out of Pocket Expenses	X			
Field Office Mobilization Cost	X			
Field Office Rental	X			
Field Office install & removal	X			
Field office Furniture	X			
Field Office Cleaning	X			
Owner Workspace in Field Office	X			
Storage Trailers	X			
Furniture for Owner: 2 each - Desk, chairs, File Cabinets & Book Case	X			
Stationary & Supplies	X			
Postage, Overnight Mail & Shipping	X			
Office Equipment	X			
Jobsite Copy Machine, Supplies & Service	X			
Computers	X			
Internet Connection	X			
Computer Software	X			
Licensing Fees	X			
On-Site IT Support	X			
Telephones	X			
Fax Lines	X			
Communication Equipment / Radios	X			

Item Description	Construction Manager	Supplied by Trades	Supplied by Owner	Comments
Photocopying	X			
Office Utilities	X			
Drinking Water / Coffee	X			
Data Processing / IT	X			
First Aid Supplies	X			
Safety Compliance Material & Labor		X		
Project Vehicle(s), Fuel, Maintenance and Insurance	X			
Survey Equipment & Supplies		X		
Project Signs	X			
Record Storage	X			
Reproduction Cost for CM use	X			
Progress Photos & Camera	X			
Staff Training	X			
Building Perimeter Protection		X		
Site Fence & Gates		X		
Ladders, Ramps & Stairs		X		
Building Enclosures		X		
Protection of Finished Work		X		
Dust Control		X		
Dust Partitions		X		
Hygiene Plan Requirements		X		
Water Consumption		X		
Electrical – Install & Maintain		X		Temporary and Permanent
Electrical - Consumption	X			Allowance

Heat – Install & Maintain		X		Temporary and Permanent Allowance
Heat – Fuel Consumption	X			
Fire Protection		X		
Watchman / Security Services	X			Allowance if Required
Temporary Parking & Roads – install & maintain		X		
Barricades		X		
Traffic Control		X		
Mud & Dust Control		X		
Tracking Pads at all Site Exits – install & maintain		X		
Wheel wash stations		X		
Parking		X		
Temporary Elevator Service		X		
Personnel & Material Hoisting		X		
Building Permit Fee			X	
General & Excess Liability Insurance	X			Trades per the Terms and Conditions
Payment & Performance Bond	X	X		Trades pay for their own. Requirements per the Contract Terms & Conditions
Builders Risk Insurance			X	
Contract Document Printing	X			
Shop Drawing Printing		X		
Provide hard & electronic copies of all Approved Submittals, Shop Drawings and RFI's to the Owner.		X		
Provide two on-site designated parking spaces for the Owner.	X			
Bid, Contract and Coordinate Independent Testing Laboratory Firm	X			



Item Description	Construction Manager	Supplied by Trades	Supplied by Owner	Comments
Land Surveyor	X			
Field Engineering Services		X		
Pest Control	X			
Bid Advertising Expenses	X			
Trash Dumpster Rental & Removal		X		
Trash Dumpster Tipping Fee		X		
Trash Chute & Hopper		X		
Final Cleanup & Window Washing		X		
General Weather Protection		X		
Snow & Ice Removal		X		
Environmental Protection – Silt Barriers – install and maintenance		X		
Coordinate Owner's FF&E Schedule and Deliveries	X			
Coordinate all required inspections, testing and Owner Consultants	X			
Coordinate all Owner Vendors, Contractors and Suppliers	X			
Per Section 14.5.6 of A133 perform Background checks	X			

**Note: The intent of this form is only to be used as a general guideline. Full scope of services required may not be noted and/or limited to items listed.**

## **ATTACHMENT H - STATE OF CONNECTICUT DEPARTMENT OF DEPARTMENT OF ADMINISTRATIVE SERVICES - DIVISION OF CONSTRUCTION SERVICES CHANGE ORDER REQUIREMENTS**

The Construction Manager shall be responsible for the preparation and submission of all contract change orders to the State of Connecticut Department of Administrative Services – Division of Construction Services ("DAS"). Change orders shall be submitted to the DAS on Form ED042CO. The Construction Manager shall adhere to the most current procedures when submitting change orders to the DAS. If the following procedures are modified by the DAS, the Construction Manager shall follow the most current procedures at no additional cost to ACES.

Change Orders shall be submitted for each individual trade contractor. Multiple change orders can be included on each ED042CO form, but they must all be from the same trade contractor.

The Construction Manager shall attach sufficient documentation with each ED042CO form to support the change order claim. Documentation shall include, but may not be limited to: itemized quotes from trade contractors and material suppliers, architectural bulletins, change directives, proposal requests, sketches and/or RFI's if applicable. The Construction Manager shall respond to requests for additional or missing documentation from the State Department of Administrative Services.

The Construction Manager shall attach an executed trade contractor change order form to each ED042CO form submitted to the DAS.

The Construction Manager shall have each ED042CO form signed by the Owner's superintendent of schools and finance officer or controller, as well as the architect and trade contractor.

The Construction Manager may not include costs for payment and performance bond increases from either the trade contractor or the Construction Manager on each individual ED042CO form. Costs for bond premium increases shall be submitted at the end of the Project using a single ED042CO form per trade and shall represent the bond premium increase on the cumulative value of all change orders issued to that trade contractor. Change orders submitted to the DAS for bond premium increases MUST include a copy of the invoice for the additional premium from the contractor's bonding company.

The Construction Manager may not include costs for CM overhead and profit and/or fee on each individual ED042CO form. Costs for CM overhead and profit shall be submitted at the end of the Project using a single ED042CO form and shall represent the total OH&P/fee on the cumulative value of all change orders issued to the trade contractors. Change orders submitted to the DAS for CM OH&P/fee on trade contractor changes must include a change order log which lists the value of each trade contractor change order.

The Construction Manager shall submit an ED042CO form to the DAS for any and all changes to the contract amount, including adds, deducts, expenditures of allowances and any value

engineering cost changes to the GMP and/or CM's contract. The Construction Manager shall submit an ED042CO form at the end of the Project to reflect any final credits (deducts) or overruns (adds) of monies spent as part of an allowance. Change orders for allowances must be submitted on a trade by trade basis and include a reconciliation log and detailed documentation of all expenditures made using the allowance funds.

The Construction Manager shall submit ED042CO change order forms to the DAS on an ongoing basis throughout the project and shall not allow change orders to accumulate over an excessive period of time at minimum, every three months.

It is the Construction Manager's responsibility to submit ED042CO change order forms with proper accompanying documentation, that meet the requirements of DAS and pursuant to Connecticut General Statutes, Chapter 173, Section 10-286 Connecticut General Statutes, which Section, in part, provides that for any school building project receiving state grant assistance under this chapter, all change orders or other change directives issued for such project on or after July 1, 2011, shall be submitted, not later than six (6) months after the date of such issuance, to DAS, in a manner prescribed by the DAS commissioner. Only change orders or other change directives submitted to DAS in accordance with the foregoing shall be eligible for state grant assistance.

## ATTACHMENT I - ACCEPTANCE OF CONTACT TERMS

\_\_\_\_\_ as a condition of satisfying the minimum requirements of that certain document entitled "REQUEST FOR QUALIFICATIONS/PROPOSALS for Construction Management at Risk Services for The Area Cooperative Educational Services — ACES at 670 Wintergreen (State Project Number 244-0045) hereby accepts the terms and conditions of the Contract included and attached to said document as Attachment A without exception.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

**ATTACHMENT J - MODIFIED AIA E202-2022 BUILDING  
INFORMATION MODELING and DIGITAL DATA EXHIBIT**

# DRAFT AIA® Document E202™ – 2022

## ***BIM Exhibit for Sharing Models with Project Participants, where Model Versions may not be enumerated as a Contract Document***

This Exhibit dated the « » day of « » in the year «2023 » is incorporated into and made a part of the AIA Document A133™-2019 Standard Form of Agreement Between Owner and Construction Manager, as modified (the “Agreement”) for the following Project:  
(Name and location or address of the Project)

«Alteration include Code and ADA Project »  
«ACES at Chase Facility »  
«565 Chase Parkway »  
«Waterbury, CT 06708 »

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 MODEL USES, SHARING, AND RELIANCE
- 3 BIM EXECUTION PLAN
- 4 LEVELS OF DEVELOPMENT
- 5 NON-BIM DIGITAL DATA
- 6 OWNERSHIP, SHARING, AND SECURITY OF DIGITAL DATA
- 7 INSURANCE FOR BIM AND DIGITAL DATA RISKS
- 8 OTHER TERMS AND CONDITIONS

### ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit establishes the terms and protocols governing reliance upon, and the ownership, development, uses, transmission, and sharing of, Building Information Models and other Digital Data for the Project.

#### § 1.2 Definitions

§ 1.2.1 **Agreement.** AIA Document A133™-2019 Standard Form of Agreement Between Owner and Construction Manager, as modified is the agreement into which this Exhibit is incorporated into and made a part of.

§ 1.2.2 **BIM Execution Plan.** A BIM Execution Plan is a written plan detailing the development and use of, and protocols related to, Project Models and setting forth each of the Project Participants’ responsibilities related thereto, as set forth herein.

§ 1.2.3 **Building Information Model or Model.** A Building Information Model (BIM), or Model is a digital representation of the Project or a subset of the Project. A Model is a collection of one or more Model Portions, each of which is an assemblage of Model Elements.

§ 1.2.3.1 **Model Portion or Portion.** A Model Portion, or Portion, is a subset of a Model as designated in Table 2.4 of this Exhibit. The Parties may designate a Model Portion by discipline, trade, area, location, phase, or other mutually agreeable distinction.

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the Parties.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ 1.2.3.2 **Model Author or Author.** A Model Author, or Author, is the Project Participant responsible for developing a Model Portion.

§ 1.2.3.3 **Model Version or Version.** A Model Version, or Version, is a specific edition of a Model or Model Portion that is sufficiently identifiable as unique and unchanged as of the time it is saved by its Author.

§ 1.2.3.4 **Model Element.** A Model Element is a digital representation of a component, system, object, or assembly within a Model.

§ 1.2.3.5 **Modeling.** Modeling is the process used to create a Model.

§ 1.2.3.6 **Non-Graphic Information.** Non-Graphic Information is any information other than the physical geometry associated with, or attached to, a Model Element. Examples of Non-Graphic Information include equipment or product manufacturer, maintenance schedule, cost per square foot, tonnage of HVAC, etc.

§ 1.2.4 **Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information, and that the transmitting party designates as “confidential.”

§ 1.2.5 **Contract Document.** The term Contract Document shall have the same meaning as in the Agreement.

§ 1.2.6 **Digital Data.** Digital Data is information created or stored for the Project in digital form.

§ 1.2.7 **Level of Development.** The Level of Development (LOD) establishes the minimum dimensional, spatial, quantitative, and qualitative aspects of a Model Element, and the degree to which Project Participants may rely upon the Model Element when developed to that level in the Model. The Levels of Development are described in Article 4.

§ 1.2.8 **Party and Parties.** Party and Parties are the Owner and the Construction Manager.

§ 1.2.9 **Project Participant.** A Project Participant is any entity or individual providing services or work on, the Project, including, but not limited to, the Owner, Architect, Construction Manager, and their respective contractors, subcontractors, consultants and sub-consultants.

§ 1.3 The Parties agree to incorporate this Exhibit, executed as of the day and year first written above, into their agreements with any other Project Participants that may develop or use Digital Data on the Project. A Party may require any Project Participant to confirm that it has incorporated this Exhibit into and made a part of its agreement for the Project.

§ 1.3.1 The Parties agree that each Project Participant developing or utilizing Digital Data on the Project is an intended third-party beneficiary of the Section 1.3 obligation to incorporate this Exhibit into agreements with other Project Participants and, therefore, is entitled to assert any rights and defenses associated with that obligation. This Exhibit shall not be construed to create a contractual relationship of any kind between Project Participants who are not otherwise in contractual privity, nor does it create any third-party beneficiary rights other than those expressly identified in this Section 1.3.1.

## ARTICLE 2 MODEL USES, SHARING, AND RELIANCE

§ 2.1 **General.** Project Participants may share, use, and rely upon a Model or Model Portion only to the extent set forth in Articles 2 and 3, unless otherwise agreed upon in writing by each Project Participant.

### § 2.2 Model Uses

§ 2.2.1 The Project Participants shall develop Models on the Project for the following uses:

*(Check all of the boxes for Model Uses that may apply on the Project and describe the selected uses.)*

§ 2.2.1.1 **Planning** *(Examples include programming, site analysis, energy analysis, scheduling, cost and quantity estimating, and documentation of existing conditions):*

« »

[ « » ] § 2.2.1.2 **Design** (Examples include design authoring, design review, 3D coordination, structural analysis, lighting analysis, energy analysis, site utilization, and engineering analysis):

« »

[ « X » ] § 2.2.1.3 **Construction Management** (Examples include preconstruction activities, scheduling, cost estimating, value engineering, and constructability):

«To be mutually agreed upon by the Parties not later than thirty (30) days after execution of the Agreement. »

[ « X » ] § 2.2.1.4 **Construction** (Examples include construction system design, procurement, fabrication, 3D control and planning, and record modeling):

«To be mutually agreed upon by the Parties prior to the commencement of the Construction Phase. »

[ « X » ] § 2.2.1.5 **Post Construction** (Examples include building system maintenance, building system analysis, asset management, space management and tracking, disaster planning, and record modeling):

«To the extent applicable, to be mutually agreed upon by the Parties prior to the commencement of the Construction Phase. »

[ « » ] § 2.2.1.6 **Other:**

« »

§ 2.2.2 No Model Portion shall be relied upon for a use not listed or described in Section 2.2.1 above.

§ 2.3 **Model Sharing.** The Parties agree to implement the Sharing Tier (“Tier”) designated in Table 2.4 for each Model Portion. The Tiers referenced in Table 2.4 are defined in Sections 2.3.1 through 2.3.2.

§ 2.3.1 **Tier One – Limited Authorized Sharing:** A Model Portion designated as Tier One may be shared by its Author with other Project Participants. However, unless otherwise authorized in writing by the Model Author, any Project Participant’s use of, or reliance upon, a Model Portion designated as Tier One shall be at the Project Participant’s sole risk. The Parties agree that no Version of a Model Portion designated as Tier One shall be enumerated as a Contract Document, unless otherwise mutually agreed upon in writing by the Parties.

§ 2.3.2 **Tier Two – Prescriptive Sharing with All Project Participants:** Subject to the reliance and authorization provisions of Section 2.5, the Parties agree that a Model Portion designated as Tier Two may be shared among all Project Participants. The Parties agree that no Version of a Model Portion designated as Tier Two shall be enumerated as a Contract Document, unless otherwise mutually agreed upon in writing by the Parties.

§ 2.4 **Sharing Tier Table.** The Parties agree to the following Sharing Tiers for the Model Portions designated in the table below.

Model Portion	Model Author	Sharing Tier	
		Tier One	Tier Two
<i>(List each Model Portion, designated by discipline, trade, area, location, phase, or other description)</i>	<i>(List the Model Author for each Model Portion)</i>	<i>(Designate a single Sharing Tier for each Model Portion)</i>	
Architecture	Architect	TBD	TBD
Structural	Structural Engineer	TBD	TBD
Mechanical, Electrical, Plumbing (MEP)/ Fire Protection	MEP Engineer/ Fire Protection Engineer	TBD	TBD



Landscape Architecture	Landscape Architect	TBD	TBD
Construction	Construction Manager	TBD	TBD

**§ 2.4.1 Default Sharing Protocols**

**§ 2.4.1.1** The Parties agree that any portion of a Model not included in Table 2.4, or any Model Portion that is not designated with a Sharing Tier, shall be Tier One.

**§ 2.4.1.2** The Parties agree that there shall be no reliance on a Portion until a Version is issued pursuant to Section 2.5. The Parties further agree that, prior to the development of a BIM Execution Plan, the Sharing Tier for any Model Portion shall be Tier One.

**§ 2.4.2 Changing or Replacing a Model Version**

**§ 2.4.2.1** Only a single Version of a Model Portion may be authorized for reliance. Model Authors may update their Model Portions by issuing an updated Version pursuant to Section 2.5.

**§ 2.5 Model Reliance**

**§ 2.5.1** A Project Participant may only rely on Models, Model Portions, and Model Elements as indicated in this Section 2.5. The Parties agree that the extent of their reliance on any Model Version shall be limited to the uses identified in Section 2.2 and in accordance with the BIM Execution Plan, which shall identify authorized reliance on Model Elements. Any reliance on a Model Version not in accordance with this Exhibit and the BIM Execution Plan shall be at the Project Participant’s sole risk.

**§ 2.5.2 Issuing Model Versions.** The Project Participants shall establish in the BIM Execution Plan the form or method that the Author(s) shall use to identify a Version of its Portion at the time of issuance, whether issued at a Designated Delivery Milestone as set forth in Section 2.5.3 or as an Interim Deliverable as set forth in Section 2.5.4.

**§ 2.5.3 Reliance on Model Versions at Designated Delivery Milestones.** The Project Participants shall set forth Designated Delivery Milestones in the BIM Execution Plan for Model Versions, either through a Model Element Table or another method. For each Designated Delivery Milestone the Project Participants will indicate the authorized reliance for each Model Element at that Designated Delivery Milestone, through the use of LOD designations or some other method. Each Author shall identify the Designated Delivery Milestone for which their Version is being issued. Project Participants shall rely on a Model Version issued at a Designated Delivery Milestone only to the extent of the authorized reliance identified in the BIM Execution Plan for that Designated Delivery Milestone.

**§ 2.5.4 Reliance on Model Versions at Interim Deliverables.** The Parties may agree in writing to permit Interim Deliverables not identified in the BIM Execution Plan for Model Versions. Each Author shall describe the extent of authorized reliance on its Interim Deliverable. Project Participants shall rely on a Model Version issued as an Interim Deliverable only to the extent authorized by the Model Author.

**§ 2.6 Model Coordination.** If Project Participants discover or become aware of any discrepancies, inconsistencies, errors, or omissions in any Model Version, they shall promptly report the discrepancy, inconsistency, error, or omission in writing to the Author, the Owner, the Construction Manager, and the Architect.

**ARTICLE 3 BIM EXECUTION PLAN**

**§ 3.1** The Parties agree that a BIM Execution Plan is required for the Project and further agree to adhere to the BIM Execution Plan. Unless otherwise stated below or mutually agreed upon in writing by the Parties, the Architect shall be responsible for preparing and updating the BIM Execution Plan in collaboration with the Owner and the Construction Manager:

*(Identify the Project Participant who will be responsible for preparing and updating the BIM Execution Plan, if other than the Architect. If different Project Participants will be responsible for updating the BIM Execution Plan at different Project milestones, then so state.)*



**§ 3.2** The following BIM Execution Plan shall be used for the Project:

*(Select one.)*

[ « » ] AIA Document G203™-2022 BIM Execution Plan, with G204™-2022 Model Element Table

[ « » ] AIA Document G203™-2022 BIM Execution Plan, with a custom model element table

[ « X » ] Other, in accordance with Section 3.2.1 below:

*(Identify and describe the BIM Execution Plan and model element table, if applicable, to be used.)*

« To be mutually agreed upon by the Parties not later than thirty (30) days after execution of the Agreement. »

§ 3.2.1 At a minimum, the BIM Execution Plan shall contain the information set forth in this Section 3.2.1, unless otherwise mutually agreed upon in writing by the Parties:

- .1 BIM-specific information, including a detailed schedule for Model development, and a list of relevant Project Participants' contact information and discipline;
- .2 Designated Delivery Milestones;
- .3 Software requirements and file exchange protocols, including software version(s) to be used for Modeling, updating policies, if any, tools to be used for collaboration or file sharing, and frequency for file sharing;
- .4 Data storage, backup, and security measures in addition to those set forth in this Exhibit;
- .5 Modeling protocols, including project coordinates, Model data subdivisions, common data fields, phasing, sheets, design options, non-modeled elements, and file naming conventions and standards;
- .6 Model management protocols including (1) defining roles, responsibilities, and collaboration and execution processes, (2) identifying meeting types and frequency, and (3) indicating quality control measures, including checks for interference, standards, and Model integrity;
- .7 Designation of the LOD of Model Elements, which can be accomplished by using a completed Model Element table;
- .8 Authorization forms for Model reliance;
- .9 Identification of Models; and
- .10 Other:  
*(Include other mandatory items to be included in the BIM Execution Plan.)*

«TBD »

§ 3.3 The Project Participant identified in Section 3.1 as responsible for preparing the BIM Execution Plan shall prepare and submit the BIM Execution Plan to the other Project Participants as soon as practicable after the date of this Exhibit and when new Project Participants are added to the Project.

§ 3.4 Upon receipt of the BIM Execution Plan, all Project Participants shall promptly review the BIM Execution Plan for the purpose of (1) providing notice of any objections thereto to the Project Participant responsible for preparing the BIM Execution Plan and (2) providing notice as set forth in Section 3.6.

§ 3.5 If a Party believes that protocols established in the BIM Execution Plan will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule, or contract time, the Party shall notify the other Party. Failure to provide notice as required in Section 3.6 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule, or contract time as a result of the established protocols.

§ 3.5.1 Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustment in compensation, contract sum, schedule, or contract time in accordance with the terms of the Agreement.

§ 3.6 Notice required under Sections 3.4 and 3.5 shall be provided within thirty days of receipt of the BIM Execution Plan, unless otherwise indicated below:

*(If the Parties require a notice period other than thirty days from receipt of the BIM Execution Plan, indicate the notice period below.)*

«Ten (10) days »

§ 3.7 The Project Participants may agree to update the BIM Execution Plan as appropriate, including when new Project Participants are added to the Project. Updates shall be prepared in accordance with the process outlined in this Article 3.

§ 3.8 The Parties agree that Model Element Levels of Development set forth in the BIM Execution Plan for Project Milestone Deliverables shall be consistent with the Model Uses identified in Section 2.2.

#### ARTICLE 4 LEVELS OF DEVELOPMENT

§ 4.1 **Level of Development Descriptions.** The LOD descriptions included in Section 4.2 through Section 4.6 below shall be used in the BIM Execution Plan to identify the minimum required characteristics for each Model Element at progressively developed levels. Other Project Participants may only rely on a Model Element consistent with the minimum required characteristics for the designated LOD.

§ 4.1.1 **Non-Graphic Information.** Non-Graphic Information may be attached to a Model Element. If Non-Graphic Information has a different degree of reliance than the Model Element to which it is attached, then the Model Author shall indicate the difference in the Model Element Table or elsewhere in the BIM Execution Plan.

§ 4.2 **LOD 100.** The Model Element may be graphically represented in the Model with a symbol or other generic representation, but does not satisfy the requirements for LOD 200. Information related to the Model Element (e.g., cost per square foot, tonnage of HVAC, etc.) can be derived from other Model Elements.

§ 4.3 **LOD 200.** The Model Element is generically and graphically represented within the Model with approximate quantity, size, shape, location, and orientation.

§ 4.4 **LOD 300.** The Model Element, as designed, is graphically represented within the Model such that its quantity, size, shape, location, and orientation can be measured.

§ 4.4.1 **LOD 350.** The Model Element, as designed, is graphically represented within the Model such that its quantity, size, shape, location, orientation, and interfaces with adjacent or dependent Model Elements can be measured.

§ 4.5 **LOD 400.** The Model Element is graphically represented within the Model with detail sufficient for fabrication, assembly, and installation.

§ 4.6 **LOD 500.** The Model Element is a graphic representation of an existing or as-constructed condition developed through a combination of observation, field verification, or interpolation. The level of accuracy shall be noted or attached to the Model Element.

#### ARTICLE 5 NON-BIM DIGITAL DATA

§ 5.1 For the creation, storage, management, archiving, and sharing of Digital Data other than Models, the Project Participants will each use their own protocols, except as noted below or as set forth in Article 6:

*(If the Parties intend to follow joint protocols for the creation, storage, management, archiving, and sharing of Digital Data other than Models, then describe those joint protocols below.)*

«To be mutually agreed to by all Parties. »

§ 5.1.1 If the Project Participants follow joint protocols for the creation, storage, management, archiving, and sharing of Digital Data as identified in Section 5.1 as anticipated in Section 5.2, then the Project Participant responsible for Model management as set forth in Section 6.5 shall also compile an archive of Digital Data other than Models at the end of each Designated Delivery Milestone and shall preserve it without alteration. Each Project Participant shall be provided with an archive of all common Project data to which they had access during the Project at the conclusion of the Project or when they are no longer performing work or services related to the Project, whichever is earlier.

§ 5.2 **Anticipated Types of Digital Data.** The Parties anticipate the following types of Digital Data to be created, stored, managed, archived, and shared in digital format on the Project:

- .1 Project Agreements and Modifications;
- .2 Project communications;

- .3 Architect's pre-construction submittals;
- .4 Contract Documents;
- .5 Construction Manager's submittals;
- .6 Subcontractor's submittals;
- .7 Modifications;
- .8 Project payment documents;
- .9 Notices and claims;
- .10 Building Information Modeling (BIM).

## ARTICLE 6 OWNERSHIP, SHARING, AND SECURITY OF DIGITAL DATA

§ 6.1 Where a provision in this Article 6 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in the Agreement shall prevail.

§ 6.2 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project.

§ 6.3 If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 6.3.1.

§ 6.3.1 The receiving Party may disclose Confidential Digital Data after seven (7) days' notice to the transmitting Party, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The receiving Party may also disclose Confidential Digital Data to its employees, consultants, sureties, subcontractors, and their employees, sub-subcontractors and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 6.4 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering, and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

§ 6.5 The Project Participant responsible for Model management shall compile an archive of all Models at the end of each Designated Delivery Milestone and shall preserve them without alteration. Each Project Participant shall be provided with an archive of all common BIM Project data to which they had access during the Project at the conclusion of the Project or when they are no longer performing work or services related to the Project, whichever is earlier. Unless assigned to another Project Participant, the Architect shall be responsible for Model management until the Owner's acceptance of the Guaranteed Maximum Price (GMP). Upon acceptance of the GMP, the Construction Manager shall be responsible for Model management and shall comply with the obligations of this section 6.5.

§ 6.6 **Data Security.** The Parties agree to the following data security measures:  
*(Identify data security measures appropriate for the Project.)*

«To be mutually agreed to by the Parties. »

§ 6.7 Except as otherwise stated in this Exhibit, the provisions of this Article 6 shall survive the termination of the Agreement.

## ARTICLE 7 INSURANCE FOR BIM AND DIGITAL DATA RISKS

§ 7.1 In addition to those insurance requirements set forth in the Agreement, as modified by the Owner and Construction Manager, including, but not limited to, AIA Document A133-2019, Exhibit B Insurance and Bonds, and Exhibit C and Article 11 of the AIA Document A201-2017, General Conditions of the Contract for Construction, as

modified by the Owner and Construction Manager, all Project Participants developing and/or using Models and/or Digital Data shall purchase and maintain the following insurance coverages:  
*(List below any insurance coverage to be provided by all, or certain, Project Participants developing or using Models or Digital Data.)*

Coverage	Limits
Cyber Liability Insurance	TBD- See Section 7.2 below.
Professional Liability Insurance	See Section 7.3 below.
Umbrella/ Excess Liability Insurance	See Section 7.4 below.

**§ 7.2 Cyber Liability Insurance.** Each Project Participant developing and/or using Models and/or Digital Data shall purchase and maintain sufficient cyber liability insurance coverage at a minimum to insure the Owner and the Additional Insured Entities against any and all claims or claims for damages arising relating to the Project, and such insurance coverage shall apply to all services provided by Construction Manager, its Trade Contractors, sub-Trade Contractors, vendors and subconsultants for the Project. The cyber liability insurance shall include coverage for security and privacy liability (including, but not limited to, privacy violations, information theft, intentional and/or unintentional release of information, regulatory defense expenses, coverage for fines and penalties, and alteration of electronic information), network security, media liability, business interruption and extra expense, crisis-management expenses (including, but not limited to, notification expenses, public relations, reputational damage, forensic investigations, and credit monitoring expenses), cyber extortion, computer fraud, and funds transfer fraud.

**§ 7.3 Professional Liability Insurance.** Each Project Participant developing and/or using Models and/or Digital Data shall purchase and maintain Professional Liability insurance covering performance of such professional services, with policy limits of not less than «One Million and 00/100 Dollars » (\$ «1,000,000 » ) per claim and «Two Million and 00/100 Dollars » (\$ «2,000,000 » ) annual aggregate on a claims made basis, and shall maintain such insurance for a period of eight (8) years following the date of Substantial Completion.

**§ 7.4 Umbrella/ Excess Liability Insurance.** Each Project Participant developing and/or using Models and/or Digital Data shall purchase and maintain Umbrella/ Excess liability insurance with policy limits of not less than «Ten Million and 00/100 Dollars » (\$ «10,000,000 » ) each occurrence, and not less than «Ten Million and 00/100 Dollars » (\$ «10,000,000 » ) in the aggregate.

**ARTICLE 8 OTHER TERMS AND CONDITIONS**

**§ 8.1** Other terms and conditions that modify this Exhibit, if any, are as follows:

«To be mutually agreed upon by the Parties. »

**§ 8.2** This Exhibit is comprised of the following documents:

- .1 AIA Document E202™-2022 BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document;
- .2 Other documents, if any, listed below:

« »

## **ATTACHMENT K – MINIMUM SCHEDULING REQUIREMENTS**

Construction Manager shall provide a Pre-Construction schedule with monthly updates, a Bidding Schedule, a Project Base Line Construction Schedule with monthly updates and a Two Week Look Ahead Schedule. All activities shall be assigned Activity codes that will allow the sorting of activities in numerous variations for evaluation. The duration of Work activities shall not exceed 20 days.

All schedules shall be in an outline acceptable to the Owner. The following are sample outlines:

### Pre-Construction Phase:

- Notice to Proceed
- Reviews and Approvals: i.e. – Planning & Zoning, Wetlands, Fire Marshal & Building Official, Federal and State Agencies and Permits.
- Design Activities by Phase: i.e. % complete for Schematic, Design Development and Construction Documents.
- Construction Management Activities: i.e. Safety & Logistic Plan, Purchasing Plan...
- Estimate & Budget Activities by Phase
- DAS Required Submissions and meetings
- Bidding & Procurement Activities
- GMP Established
- Develop Detailed Construction Schedule.

### Construction Phase:

- Notice to Proceed
- Procurement - Subcontracts Executed
- Submittals – Submit, Review, Approve
- Equipment / Material long lead items
- Work Activities
- Milestones for Building Watertight & Permanent Power
- Owner Activities
- Commission/Start-up/Balancing
- Substantial Completion Milestone
- Punch List/Close-Out/O&M's
- Certificate of Occupancy
- Final Acceptance Milestone

The Project schedule is to be updated monthly at a minimum. If conditions of the project dictate, the interval between updates should be adjusted accordingly. The following schedule reports

should be generated and evaluated after each update: Critical Path, Total Float of Ten Days or Less, 30 to 60 Day Construction Look Ahead Schedule. Also a 30 Day Construction Look Ahead by Subcontract to isolate and evaluate with subcontractors.

If changes and/or unforeseen conditions occur during the construction phase the Construction Manager shall properly evaluate the impact and recommend recovery strategies. Once an impact to the project schedule is identified, the effects shall be sufficiently documented by the Construction Manager and forwarded to the Owner and Architect within ten (10) days.

Additional Requirements:

## **PRE CONSTRUCTION/DESIGN PHASE**

1. Baseline schedule development
2. Revisions and meetings as defined for schedule development
3. The monthly pre construction schedule updates shall include a written narrative: detailing all schedule modifications, activities added or revised, changes in duration (overall and by individual activity). The narrative shall be clearly written and any schedule modifications and/or project impacts noted.

Include

## **BASELINE SCHEDULE DEVELOPMENT**

1. Detailed schedule of activities that incorporates: all Work as derived from the plans and specifications, meetings with the project team and the Construction Managers knowledge and experience.
2. Development of time-scaled critical path method network diagram for entire project.
3. Meetings to present and review the schedule and updates
4. Make Schedule Revisions during Pre-Construction as required
5. WBS and Activity code dictionaries as required
6. Reports and graphics as specified
7. Schedule data backup in P6 format or an as equal scheduling program. Provide the Architect and Owner with hard copies and electronic copies of all schedules and updates.
8. The duration of the Baseline Schedule shall be within the time stipulated in the RFP/Q. If the Construction Manager changes the duration changes they shall notify the Architect and Owner immediately in writing.
9. Baseline Schedule: is to be incorporated into the Construction Managers subcontract bidding documents, accepted by all Subcontractors as the project baseline schedule and submitted by the Construction Managers as the GMP Baseline schedule.

## **CONSTRUCTION PHASE SCHEDULE**

1. Update Baseline schedule submitted with GMP
2. Jobsite meetings to review schedule update data
3. Update schedule with data collected from the site (including data from major suppliers and subcontractors)
4. Production of required reports and graphics
5. Recovery schedules and delay documentation
6. Perform Monthly schedule updates and submit to the Architect and Owner in the Monthly Report and Requisition
7. The monthly construction schedule updates shall include a written narrative: detailing all schedule modifications, activities added or revised, changes in duration (overall and by individual activity). The narrative shall be clearly written and any schedule modifications and/or project impacts noted.